

# CONDO. PLAT No.

## GENERAL NOTES

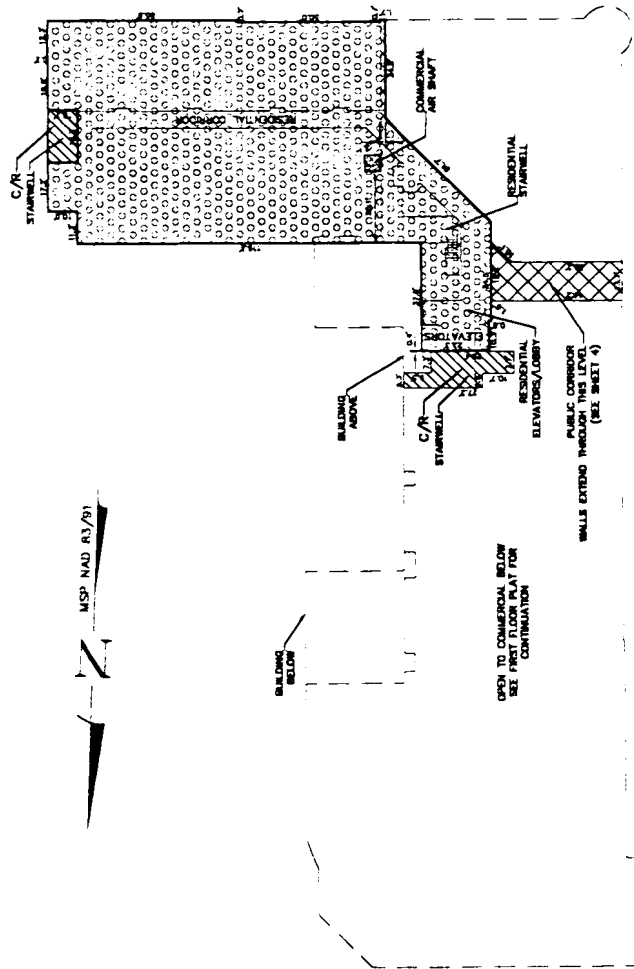
1. Horizontal and Vertical Datum based on Maryland State Plane North American 1983 datum.
2. The Common Elements
  - a. The Common Elements shall consist of all the Condominium Units, including the common areas, which are not part of any Condominium Unit.
  - b. The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
3. The Limited Common Elements as set forth in the Declaration assigned (L.C.E.) herein, are shown herein.
4. The General Common Elements, designated (G.C.E.) herein, are comprised of all the areas and facilities which are not a part of a "Unit" or Limited Common Element as shown herein as set forth in the Declaration.
5. The pricing of this property for condominium selling purposes shall be based on the information and data provided for inclusion in the property sales materials.
6. The boundaries of the condominium units shown herein coincide with the proposed building structure. All dimensions of such condominium unit shall be based on the information and data provided for inclusion in the following building construction.

LEGEND	
	Commercial Unit
	Residential Unit
	Parking
	Limited Common Element
	General Common Element
	Reserved General Common Element

## LEGEND NOTES

- \* P/R = Parking and Residential Element
- \* C/R = Commercial and Residential Element
- \* P/C = Parking and Commercial Element

309



## GRAPHIC SCALE



CONDOMINIUM PLAT  
MEZZANINE LEVEL  
SHEET 5 OF 15  
**ROCKVILLE TOWN SQUARE**  
**BLOCK 5 CONDOMINIUM**  
ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: 1" = 30' FEBRUARY, 2005

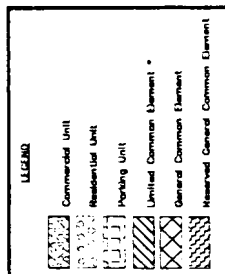
**MHG** Macris, Hendricks & Glascock, P.A.  
Engineers - Planners  
Landscape Architects - Surveyors  
1225 Woodmont Road, Suite 120  
Rockville, Maryland 20850-1272  
Phone: 301.432.2640  
Fax: 301.442.0280  
www.mhga.com

97.387.05

DATE: \_\_\_\_\_  
Condominium Plat No.

**GENERAL NOTES**

- Horizontal and Vertical Uniform based on Maryland State Thru  
MAGNET/RI) submit.
- The Common Elements
- The Common Elements shall consist of all the Condominium Units and the Common Elements adjacent thereto and the part of any Condominium Unit.
  - The Common Elements shall be comprised of the United Common Elements and the General Common Elements as set forth in the Declaration.
  - The United Common Elements as set forth in the Declaration designated (U.C.E.) hereby, are shown herein.
  - The General Common Elements, designated (G.C.E.) hereby, are the portion of the Condominium Unit which is not a part of a "Unit" or United Common Element as shown herein or set forth in the Declaration.
- The granting of this project is for condominium purport purpose only. This condominium shall not be subject to a restriction to the property this important declaration that:
- The enjoyment of the good benefits will be shared.
  - As-built dimensions of such condominium unit will be maintained.
  - As-built dimensions of such condominium unit will be maintained including building construction.



**LEGEND NOTES:**

- P/R = Parking and Residential Element
- C/R = Commercial and Residential Element
- P/C = Parking and Commercial Element

CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD IN ARCS	CHORD
C1	11.72	41.82	21°28'18"	35.04	3.453828	1.2121
C2	10.48	13.90	74°16'48"	7.84	5.015200	12.87
C3	10.48	13.90	74°16'48"	7.84	5.015200	12.87

CONDOMINIUM PLAT  
SECOND FLOOR  
SHEET 6 OF 15

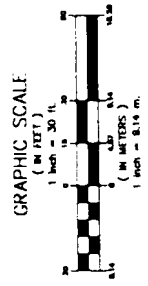
ROCKVILLE TOWN SQUARE  
BLOCK 5 CONDOMINIUM

ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND

SCALE: 1" = 30' FEBRUARY, 2005

**MHG**  
6220 Weymouth Road, Suite 120  
Montgomery Village, Maryland  
20855-1779

Macris, Hendricks & Glascock, P.A.  
Engineers • Planners  
Landscape Architects • Surveyors  
Phone: 301.670.0840  
Fax: 301.948.0880  
www.mhg.com



DATE: \_\_\_\_\_

Indomium Plot No.: \_\_\_\_\_

# CONDO. PLAT No.

GENERAL NOTES

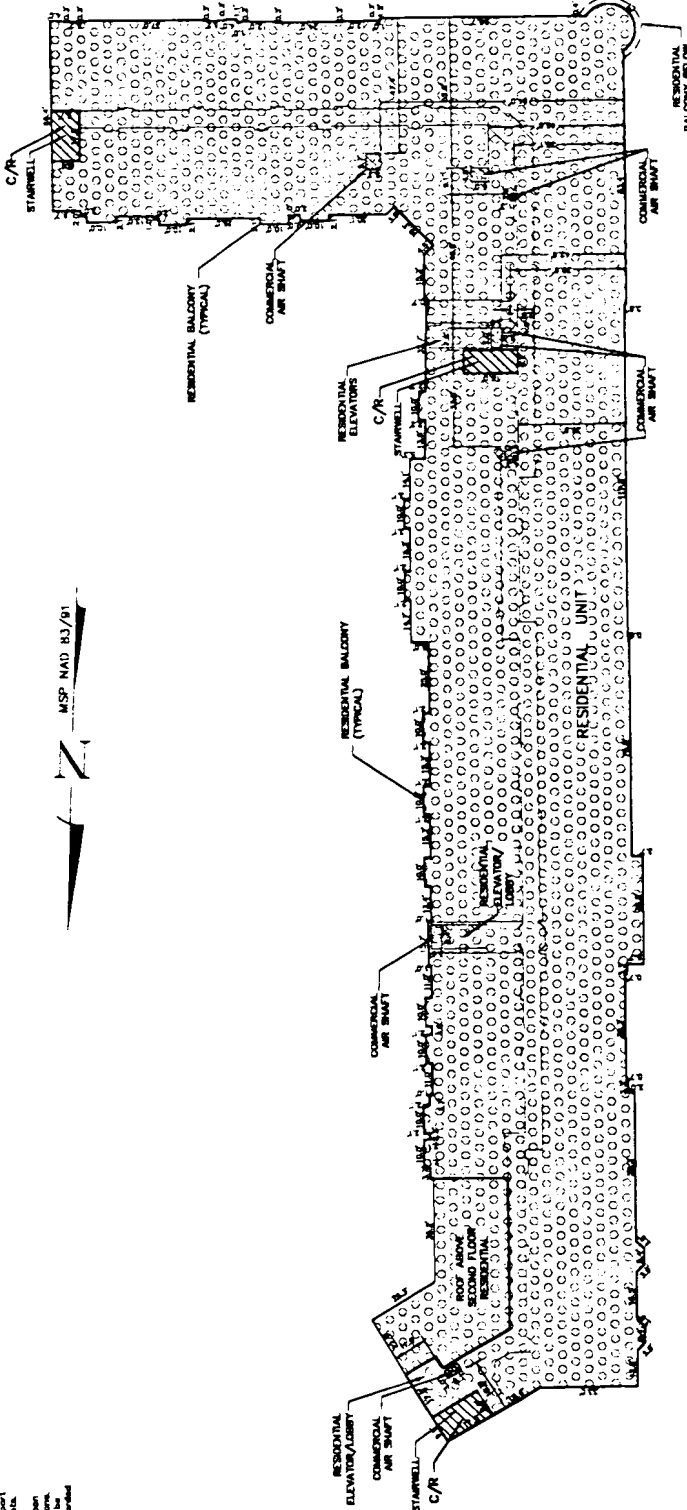
1. The Condominium Unit shall consist of all the Condominium Unit, including the improvements thereon, which are not part of any other Condominium Unit.
2. The Common Elements shall consist of all the Condominium Unit, including the improvements thereon, which are not part of any other Condominium Unit.
3. The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
4. The Limited Common Elements as set forth in the Declaration designated (L.C.E.) shall, are shown herein.
5. The General Common Elements, designated (G.C.E.) shall, are comprised of all the areas and facilities which are not a part of a "Unit" or Limited Common Element as shown herein as set forth in the Declaration.
6. The parking of this property is for the condominium parking only and shall not be used for any other purpose. The parking spaces are shown herein and shall be used for the parking of automobiles only.
7. The dimensions of the condominium units shown herein are for the purpose of the plat only and shall not be construed as a warranty of the actual dimensions of the units. The actual dimensions of the units shall be determined by the surveyor.
8. The dimensions of the building envelope dimensions, including the building envelope, shall be determined by the surveyor.

LEGEND	
	Commercial Unit
	Residential Unit
	Parking Unit
	Limited Common Element *
	General Common Element
	Reserved General Common Element

## LEGEND NOTES

- \* P/R - Parking and Residential Element
- \* C/R - Commercial and Residential Element
- \* P/C - Parking and Commercial Element

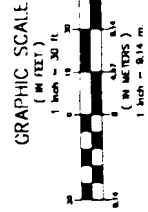
311



CURVE TABLE				
CHORD BEARING	CHORD BEARING	CHORD BEARING	CHORD BEARING	CHORD BEARING
12.37	12.37	12.37	12.37	12.37

CONDOMINIUM PLAT  
THIRD FLOOR  
SHEET 7 OF 15  
**ROCKVILLE TOWN SQUARE**  
**BLOCK 5 CONDOMINIUM**  
ELECTION DISTRICT No. 4  
CITY of ROCKVILLE, MARYLAND  
SCALE: 1" = 30' FEBRUARY, 2005

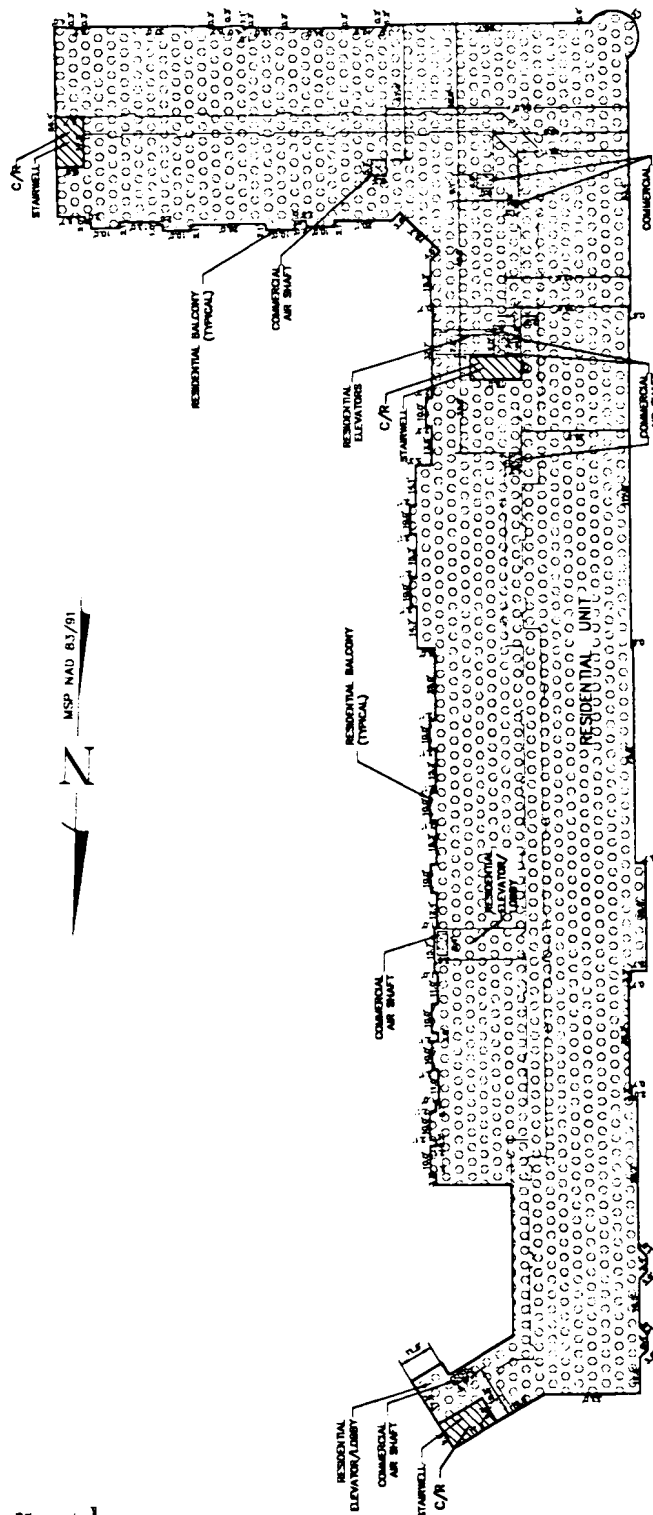
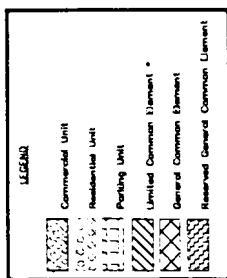
**MHG**  
Macris, Hendricks & Glascock, P.A.  
Engineers & Architects  
Landscaping Architects - Surveyors  
Phone: 301.870.0840  
Fax: 301.842.0882  
www.mhg.com



DATUM: ...  
Condominium Plat No. ...

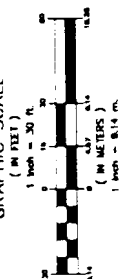
# CONDO. PLAT No.

- GENERAL NOTES.**
- Horizontal and Vertical Datum based on Maryland State Plane NAD83/91 datum.
  - The Common Elements
    - The Common Elements shall consist of all the Condominium Property and Improvements thereon which are not part of any Condominium Unit.
    - The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
  - The Limited Common Elements are set forth in the Declaration and designated (L.C.E.) herein, are shown herein.
  - The General Common Elements, designated (G.C.E.) herein, are set forth in the Declaration and designated (G.C.E.) herein, are shown herein.
  - The parking of the property is for condominium selling purposes only. The condominium plat does not purport to subdivide the property into separate subdivisions.
  - The dimensions of the condominium units shown herein coincide with the proposed building envelope dimensions shown on the recorded subdivision plat. The recorded building construction



CURVE TABLE			
CURVE	RADIUS	LENGTH	DELTA
CL	50.0'	33.20'	201°28'37"
			50.8'
			5.3829 30' 11.237'

GRAPHIC SCALE



CONDOMINIUM PLAT  
FOURTH FLOOR  
SHEET 8 OF 15  
**ROCKVILLE TOWN SQUARE**  
**BLOCK 5 CONDOMINIUM**  
ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: 1" = 30'  
FEBRUARY, 2005

**MHG** Macris, Hendricks & Glascock, P.A.  
Engineers • Planners  
Landscape Architects • Surveyors  
Phone: 301.870.0840  
Fax: 301.844.0880  
www.mhg.com

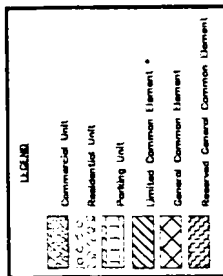
97,397.05

DATE: \_\_\_\_\_  
Condominium Plat No. \_\_\_\_\_

# CONDO. PLAT No.

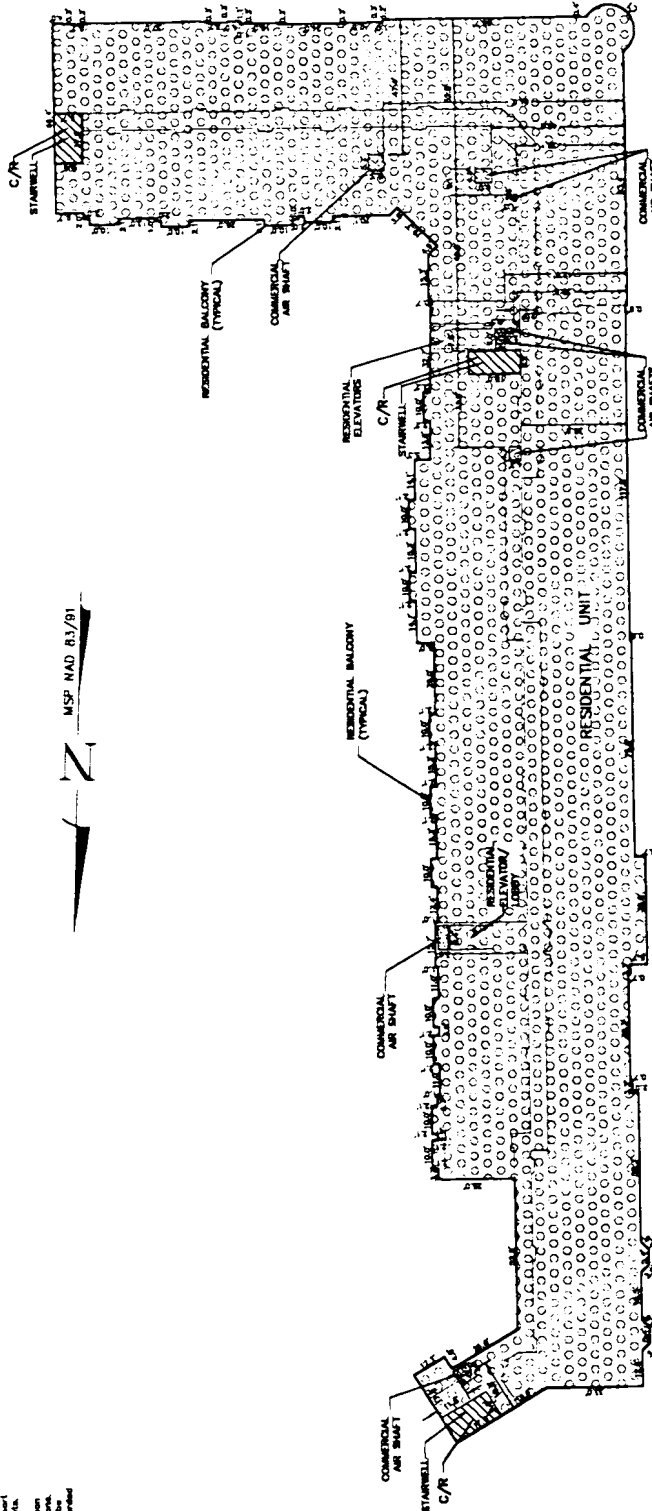
## GENERAL NOTES

1. Horizontal and Vertical datum based on Maryland State Plane NAD83/91 datum.
2. The Common Elements
  - a. The Common Elements shall consist of all of the Condominium Property and improvements therein which are not part of any Condominium Unit.
  - b. The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
3. The Limited Common Elements as set forth in the Declaration designated (L.C.E.) herein, are shown herein.
4. The General Common Elements, designated (G.C.E.) herein, are shown herein.
5. The portions of this property to be used for common purposes only. The condominium plat does not purport to subdivide the property into separate subdivisions.
6. The dimensions of the condominium units shown herein are for informational purposes only. The actual dimensions shown on the recorded condominium plat shall be the recorded dimensions.



## LEGEND NOTES

- \* P/R - Parking and Residential Element
- \* C/R - Commercial and Residential Element
- \* P/C - Parking and Commercial Element



CURVE TABLE				
CURVE	RADIUS	LENGTH	DELTA	TANGENT
CHORD	BEARINGS	CHORD	BEARINGS	CHORD
CL	8.00'	32.30'	204.59'	50.81'
				5.951830' L 17.37'

CONDOMINIUM PLAT  
FIFTH FLOOR  
SHEET 9 OF 15

ROCKVILLE TOWN SQUARE  
BLOCK 5 CONDOMINIUM

ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: 1" = 30' FEBRUARY, 2005

**MHG** Macris, Hendricks & Glascock, P.A.  
Landmarks Architects - Surveyors  
1025 Northpoint Blvd., Suite 100  
Rockville, Maryland 20850  
Phone: 301.870.2840  
Fax: 301.844.0885  
www.mhgpa.com

GRAPHIC SCALE  
(IN FEET)  
1 inch = 30 ft.  
(IN METERS)  
1 inch = 8.14 m.

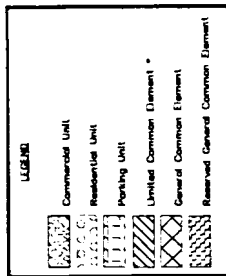
DATE: \_\_\_\_\_  
Condominium Plat No. \_\_\_\_\_

97.937.05

# CONDO. PLAT No.

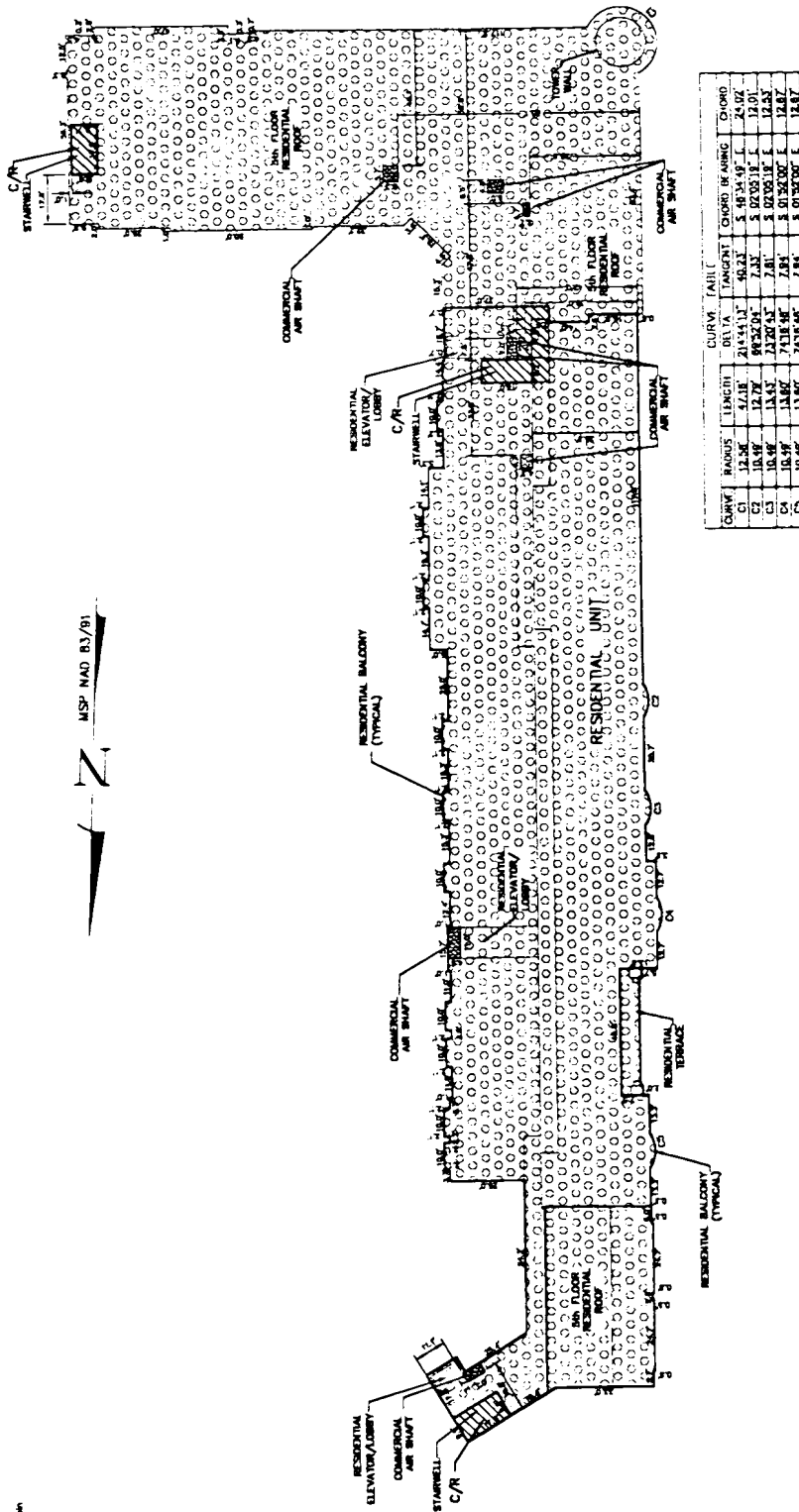
## GENERAL NOTES

1. Horizontal and Vertical Datum based on Maryland State Plane NAD83/91 datum.
2. The Common Elements
  - a. The Common Elements shall consist of all the Condominium Units and any Common Elements which are not part of any Condominium Unit.
  - b. The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
3. The Limited Common Elements as set forth in the Declaration shall be used for the purpose of the Declaration.
4. The General Common Elements, designated (G.C.E.) herein, are comprised of all the areas and facilities which are not a part of a "Unit" or Limited Common Element as shown herein or as set forth in the Declaration.
5. The parking of this property is for condominium parking purposes only. The parking area is not to be used for other purposes and is to be used for the purpose of the Declaration.
6. The dimensions of the condominium units, shown herein, are based on the dimensions of the units as shown on the plans. The actual dimensions of each condominium unit will be determined by the Maryland Department of the Environment following building construction.



## LEGEND NOTES

- P/R - Parking and Residential Element
- C/R - Commercial and Residential Element
- P/C - Parking and Commercial Element

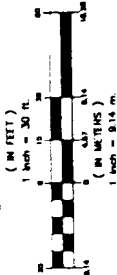


CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHORD BEARING	CHORD
C1	12.56'	47.18'	214°44'13"	50.23'	S 48°24'49" E	24.02'
C2	10.48'	12.70'	88°32'04"	7.33'	S 02°03'19" E	12.01'
C3	10.48'	13.43'	73°20'43"	7.81'	S 02°03'19" E	12.53'
C4	10.48'	13.80'	73°18'58"	7.81'	S 02°03'00" E	12.87'
C5	10.48'	13.80'	73°18'58"	7.81'	S 02°03'00" E	12.87'

CONDOMINIUM PLAT  
SIXTH FLOOR  
SHEET 10 OF 15  
**ROCKVILLE TOWN SQUARE**  
**BLOCK 5 CONDOMINIUM**  
ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: 1" = 30'  
FEBRUARY, 2005

**MHG**  
Macdis, Hendricks & Glascock, P.A.  
Engineers - Planners  
Landscape Architects - Surveyors  
Phone 301.870.0840  
Fax 301.844.0885  
www.mhg.com  
20855-1578

## GRAPHIC SCALE



DATE: \_\_\_\_\_

Condominium Plat No. \_\_\_\_\_

97.307.05

# CONDO. PLAT No.

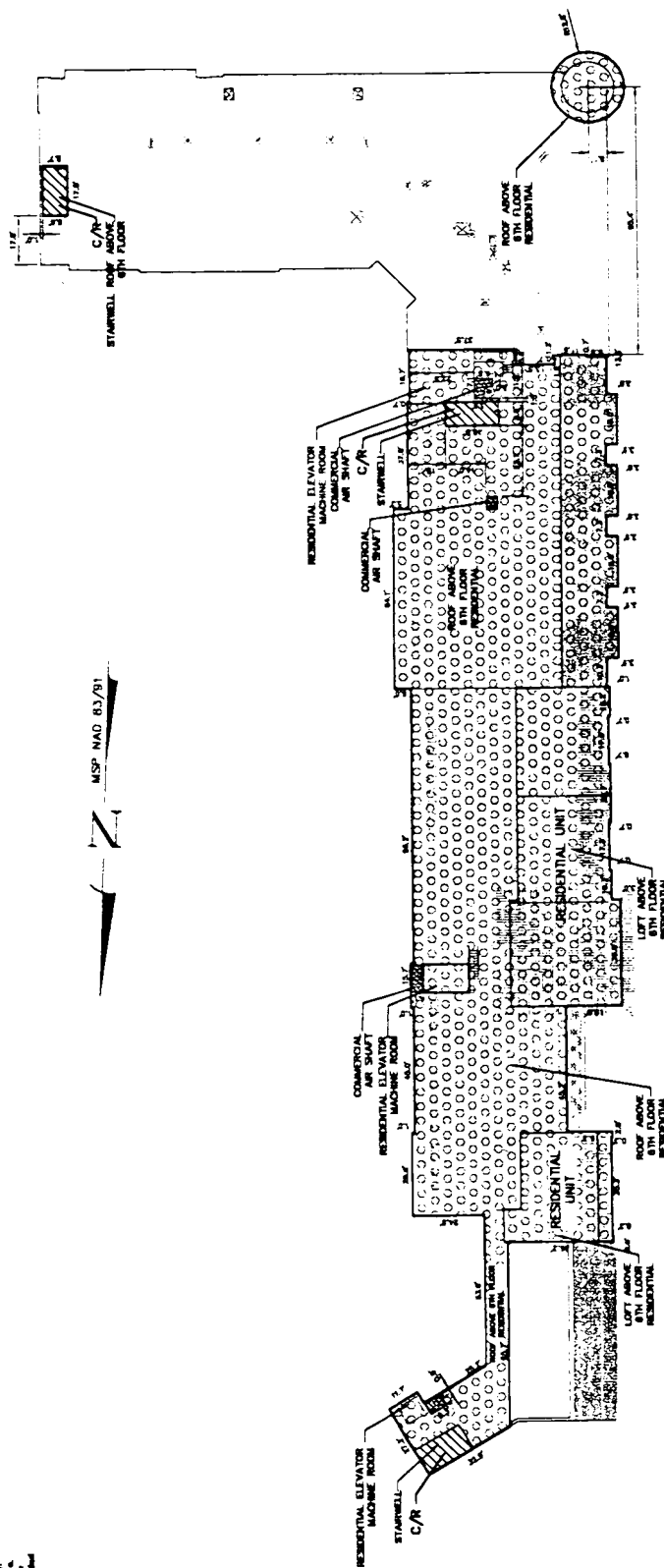
## GENERAL NOTES

1. Horizontal and Vertical Datum based on Maryland State Plane NAD83/91 datum.
2. The Common Elements
  - a. The Common Elements shall consist of all the Condominium property and improvements thereon which are not part of any Condominium Unit.
  - b. The Common Elements shall be comprised of the limited common elements and the general common elements as set forth in the Declaration.
3. The limited common elements are all built in the Condominium designated (L.C.E.) herein, are shown herein.
4. The General Common Elements, designated (G.C.E.) herein, are all the elements of the Condominium which are not part of a "Unit" or limited common element as shown herein or as set forth in the Declaration.
5. The plat of this property is for condominium platting purposes only. This condominium plat does not purport to subdivide the property into separate subdivisions.
6. The dimensions of the condominium units shown herein are based on the proposed building envelope shown on the attached condominium plat to be recorded following building construction.

LEGEND	
	Commercial Unit
	Residential Unit
	Parking Unit
	Limited Common Element
	General Common Element
	Reserved General Common Element

## LEGEND NOTES

- P/R = Parking and Residential Element
- C/R = Commercial and Residential Element
- P/C = Parking and Commercial Element



MSP NAD 83/91

GRAPHIC SCALE  
(IN FEET)  
1 inch = 20 ft.  
(IN METERS)  
1 inch = 8.14 m.

CONDOMINIUM PLAT  
SIXTH FLOOR LOFT LEVEL  
SHEET 11 OF 15

ROCKVILLE TOWN SQUARE  
BLOCK 5 CONDOMINIUM

ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: 1" = 30' FEBRUARY, 2005

**MHG** Macris, Hendricks & Glascock, P.A.  
Engineers - Planners  
Landscape Architects - Surveyors  
Phone: 301.470.0240  
Fax: 301.470.0240  
10000 Rockville Pike, Suite 100  
Rockville, Maryland 20850-1000

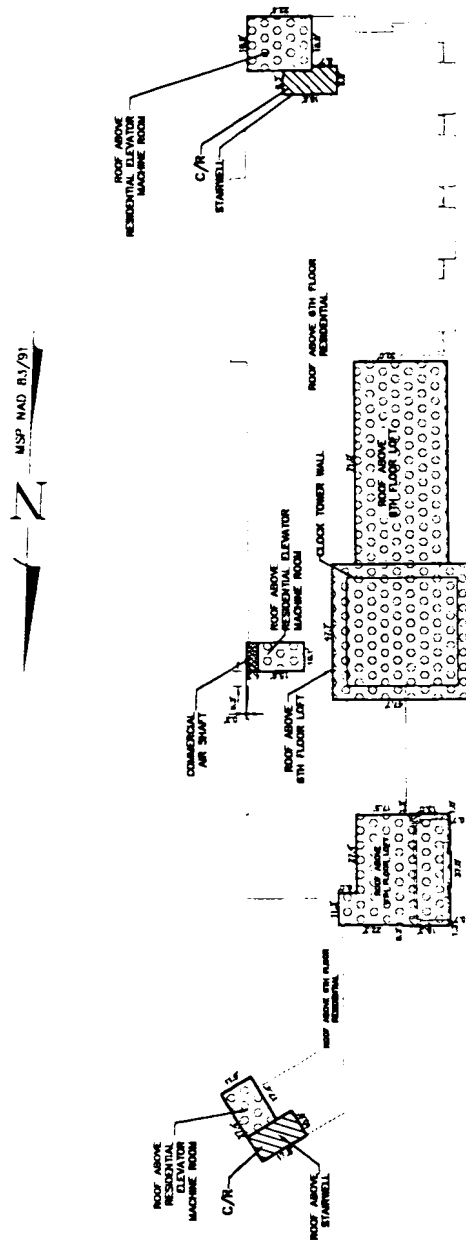
DATE: \_\_\_\_\_  
Condominium Plat No. \_\_\_\_\_

97.397.05

CONDO. PLAT No.

- | Legend | Commercial Unit | Residential Unit | Parking Unit | Unfilled Common Element | General Common Element | Reserved General Common Element |
|--------|-----------------|------------------|--------------|-------------------------|------------------------|---------------------------------|
|        |                 |                  |              |                         |                        |                                 |
|        |                 |                  |              |                         |                        |                                 |
|        |                 |                  |              |                         |                        |                                 |
|        |                 |                  |              |                         |                        |                                 |
|        |                 |                  |              |                         |                        |                                 |
|        |                 |                  |              |                         |                        |                                 |

P/R = Parking and Residential Element  
C/R = Commercial and Residential Element  
P/C = Parking and Commercial Element



GRAPHIC SCALE



CONDOMINIUM PLAT  
PENTHOUSE / ROOF LEVEL  
SHEET 12 OF 15  
ROCKVILLE TOWN SQUARE  
BLOCK 5 CONDOMINIUM  
ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: 1" = 30'  
FEBRUARY, 2005



**LANDSCAPE ARCHITECTS & LANDSCAPE ARCHITECTS**

2220 Highways Road, Suite 120  
Montgomery Village, Maryland  
20886-1778  
Phone 301.570.0840  
Fax 301.948.0283  
www.mvlandscape.com

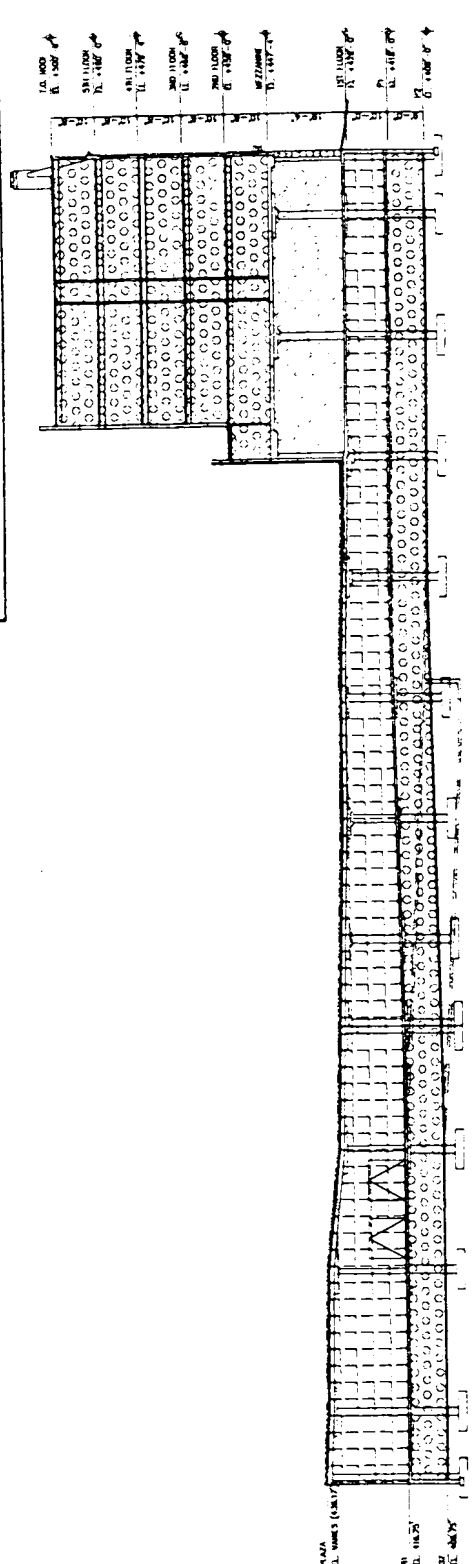
97.397.05

DATE: \_\_\_\_\_ Plot No.: \_\_\_\_\_



# CONDO. PLAT No.

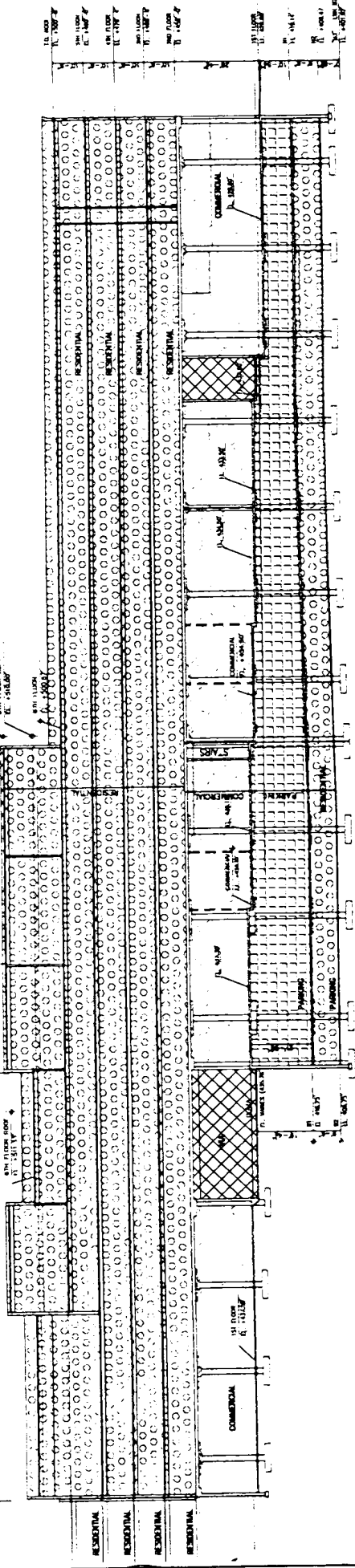
- GENERAL NOTES**
- Horizontal and Vertical Datum based on Maryland State Plane NAD83/11 datum.
  - The Common Elements
    - The Common Elements shall consist of all the Condominium Units and the Common Elements which are not part of any Condominium Unit.
    - The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
    - The Limited Common Elements as set forth in the Declaration are designated (L.C.E.) herein, are shown hereon.
    - The General Common Elements, designated (G.C.E.) herein, are the portions of the property and buildings which are not a part of a "Unit" or Limited Common Element as shown hereon or as set forth in the Declaration.
  - The showing of this property is for condominium platting purposes only. This condominium plat does not purport to establish the property into separate subdivisions.
  - The dimensions of the condominium units shown hereon are for information only. The actual dimensions of each condominium unit will be shown on the recorded condominium plat to be recorded following building construction.



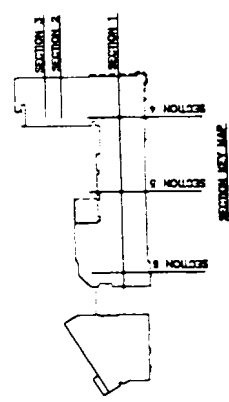
SECTION 2 LOOKING EAST

CLOCK TOWER

BLDG. #4 BLDG. #5



SECTION 1 LOOKING EAST



**LEGEND**

[Symbol]	Commercial Unit
[Symbol]	Residential Unit
[Symbol]	Parking Unit
[Symbol]	Limited Common Element
[Symbol]	General Common Element
[Symbol]	Reserved General Common Element

- LEGEND NOTES**
- \* P/M - Parking and Residential Element
  - \* C/R - Commercial and Residential Element
  - \* P/C - Parking and Commercial Element

CONDOMINIUM PLAT  
SECTIONS  
SHEET 13 OF 15  
ROCKVILLE TOWN SQUARE  
BLOCK 5 CONDOMINIUM

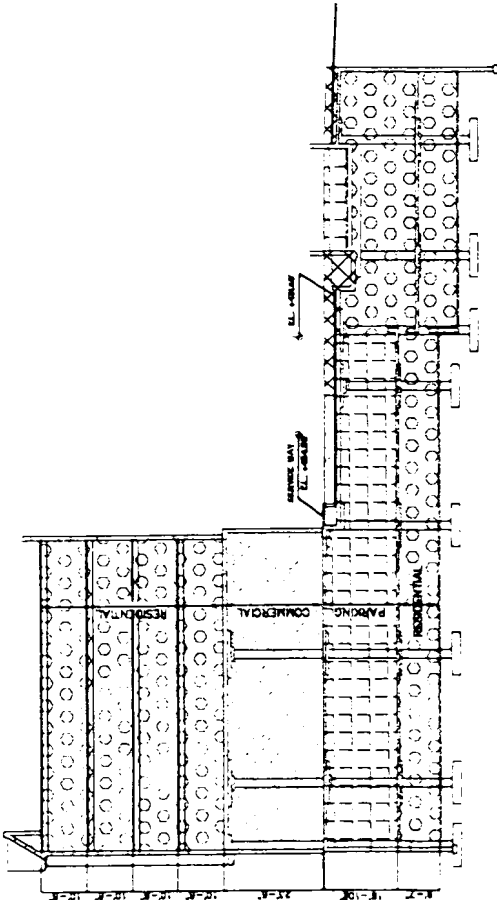
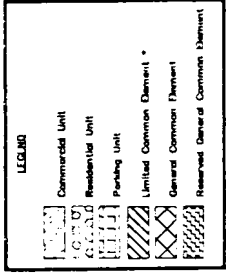
ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: NTS FEBRUARY, 2005

**MHG**  
McCrillis, Hendricks & Glascock, P.A.  
Engineers • Planners  
Landscape Architects • Surveyors  
Phone: 301.470.0000  
Fax: 301.470.0001  
www.mhgpa.com

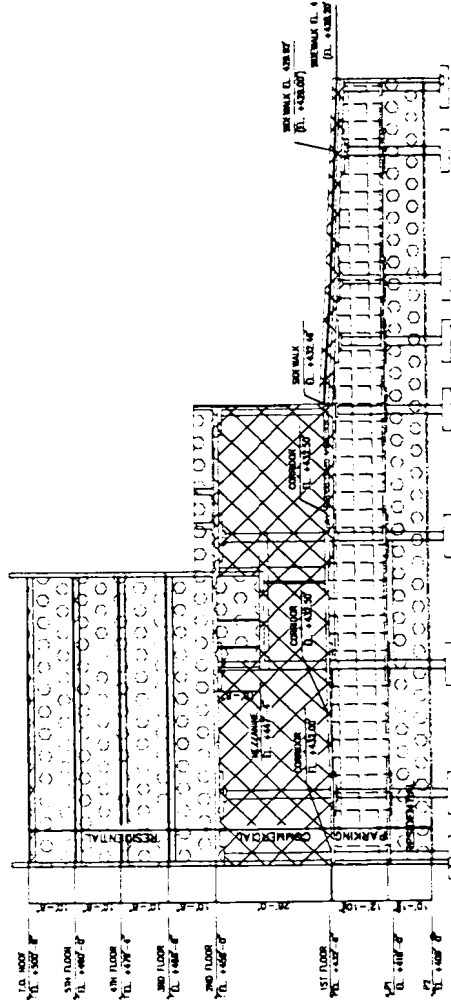
97.397.05

DATE  
Condominium Plat No.

# CONDO. PLAT No.

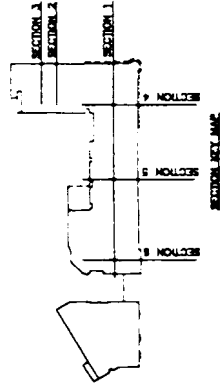


SECTION 5 LOOKING NORTH



SECTION 4 LOOKING NORTH

SECTION 6 LOOKING NORTH



CONDOMINIUM PLAT  
SECTIONS  
SHEET 14 OF 15  
ROCKVILLE TOWN SQUARE  
BLOCK 5 CONDOMINIUM  
ELECTION DISTRICT No. 4  
CITY OF ROCKVILLE, MARYLAND  
SCALE: NTS FEBRUARY, 2005

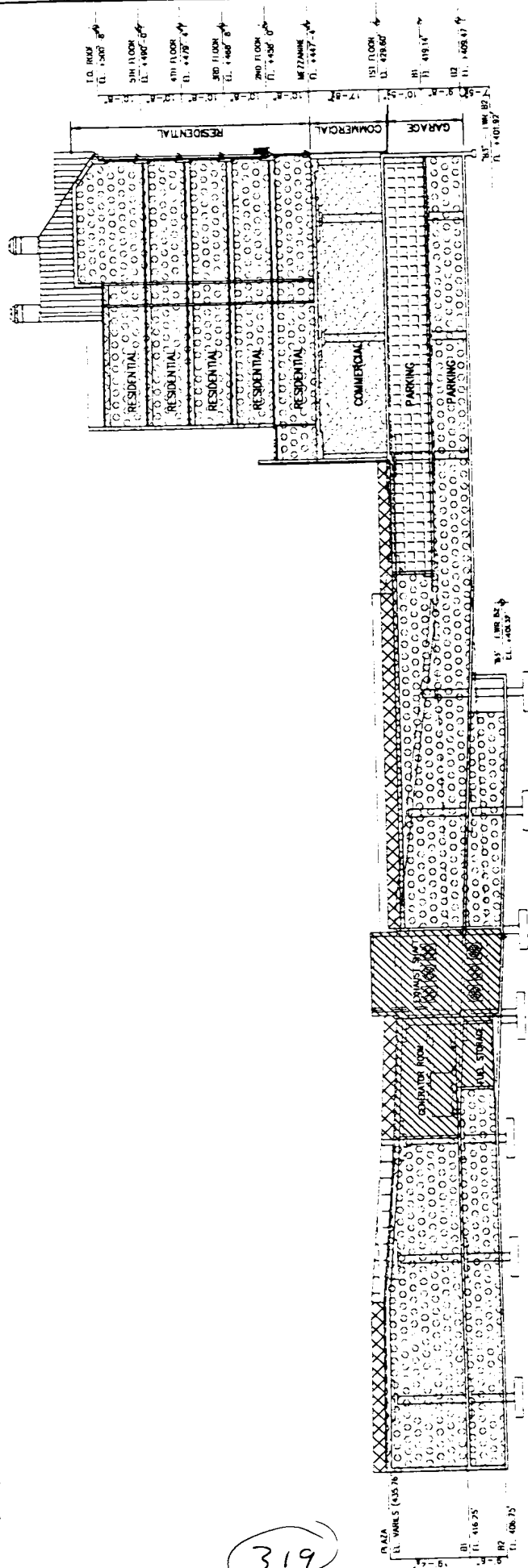
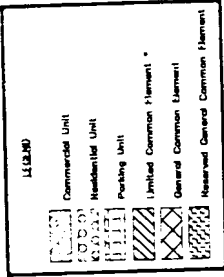
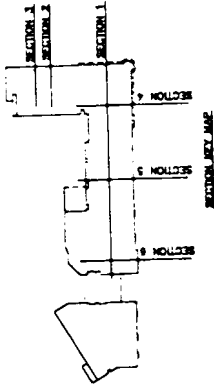
**MHG**  
Macroe, Hendricks & Glascock, P.A.  
Engineers • Planners  
Landscapes Architects • Surveyors  
Phone: 301.570.0400  
Fax: 301.544.1885  
www.mhgpa.com

DATE: \_\_\_\_\_  
Condominium Plat No. \_\_\_\_\_

# CONDO. PLAT No.

## GENERAL NOTES

1. Horizontal and Vertical Datum based on Maryland State Plane NAD83/81 datum.
2. The Common Elements
  - a. The Common Elements and content of all the Condominium Units are shown on the Declaration and are not part of any Condominium Unit.
  - b. The Common Elements shall be comprised of the Limited Common Elements and the General Common Elements as set forth in the Declaration.
  - c. The Limited Common Elements as set forth in the Declaration designated (L.C.E.) herein, are shown herein.
  - d. The General Common Elements designated (G.C.E.) herein, are the Common Elements and the Limited Common Elements which are not a part of a "Unit" or Limited Common Element as shown herein as set forth in the Declaration.
3. The phrasing of this property is for condominium selling purposes only. The condominium plat does not constitute a contract and shall be subject to the provisions of the Maryland Condominium Act, which shall govern the interpretation of this plat and the Condominium Declaration.
4. The dimensions of the condominium units shown on this plat are for informational purposes only and shall not be used for building construction.
5. The dimensions of the common areas shown on this plat are for informational purposes only and shall not be used for building construction.



SECTION 3. LOOKING EAST TO HUNGERFORD DRIVE

CONDOMINIUM PLAT  
SECTIONS  
SHEET 15 OF 15  
ROCKVILLE TOWN SQUARE  
BLOCK 5 CONDOMINIUM  
ELECTION DISTRICT No. 4  
CITY of ROCKVILLE, MARYLAND  
SCALE: NTS FEBRUARY, 2005

**MHG** Macris, Hendricks & Glascock, P.A.  
Engineers - Planners  
Landscape Architects - Surveyors  
Phone: 301.470.0200  
Fax: 301.442.0200  
www.mhg.com

DATE: \_\_\_\_\_  
Condominium Plat No. \_\_\_\_\_

## EXHIBIT D

### Schedule of Percentage Interests and Vote

Percentage Interests of All Unit Owners in General Common Elements and General Common Expenses and of the Vote in the Council of Unit Owners:

<u>Unit Designation</u>	<u>Estimated Square Feet</u>	<u>Percentage Interest</u>	<u>Vote</u>
Commercial Unit	46,137	33.3%	1
Residential Unit	263,127	33.3%	1
Parking Unit	56,991	33.4%	1
<b>Total</b>	<u>366,255</u>	<u>100%</u>	<u>3</u>

Pursuant to Section 11.7 of this Declaration, upon completion of the initial construction of the improvements within the Property, the Percentage Interests will be promptly reallocated as necessary based upon the "as-built" square footage of the Units measured by the Board of Directors in accordance with the then current standards adopted by the Building Owners and Managers Association International or its successor.

## EXHIBIT E

### Schedule of Alternative Percentage Allocations, Special Maintenance Items and Special Maintenance Expenses (Attached)

322

[illegible]

**RULES AND REGULATIONS FOR  
ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM**

**THESE RULES AND REGULATIONS FOR ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM** (the “Rules”) are hereby adopted in accordance with the provisions of Section 4.1 of the Declaration for Rockville Town Square Block 5 Condominium (the “Declaration”) dated \_\_\_\_\_, 2005 by RTS Residential Block 5, LLC, a Delaware limited liability company. All capitalized terms used in these Rules and not otherwise defined herein shall have the same meaning ascribed to them in the Declaration. These Rules govern various aspects of the use and the operation of the Property and are intended to be covenants running with the land pursuant to Applicable Law, and not personal covenants, and are intended to run with title to, and be burdens upon, each of the Units and to be binding upon each Unit Owner and its successors, assigns, tenants, subtenants, licensees and invitees using or occupying any portion of the Property.

**PARKING**

1.1 Hours of Operation of the Parking Unit. The Parking Unit Owner shall keep the Parking Unit open twenty-four (24) hours a day, seven (7) days a week, three hundred and sixty-five (365) days per year for parking use by the Parking Beneficiaries.

1.2 Maintenance Standards. The Parking Unit Owner shall cause the Parking Unit to be maintained in a good and workmanlike manner in accordance with all Applicable Law and with the maintenance, cleaning, repair and inspection specifications attached hereto as Exhibit A. The Parking Unit Owner shall not perform any cleaning, maintenance or repair activities within or about the Parking Unit that would generate noise or vibrations that would interfere with the safety, comfort or convenience of any occupant of any Other Unit between the hours of 11:00 p.m. and 6:00 a.m. Any significant cleaning (i.e., cleaning that is not routine cleaning described on Exhibit A attached hereto and would generate unreasonable noise or vibration) shall only be performed between the hours of 11:00 p.m. and 6:00 a.m. and shall be conducted in a manner that does not materially impede the flow of traffic. Routine cleaning of the Parking Unit in accordance with the cleaning specifications described on Exhibit A shall be performed between the hours of 6:00 a.m. and 11:00 p.m. and shall be conducted in a manner that does not materially impede the flow of traffic.

1.2.1 If at any time the Residential Unit Owner shall determine that a condition exists within the Parking Unit that adversely effects access to, from and/or through the Parking Unit to the Residential Parking Facility and such condition requires immediate maintenance and/or repair, then the Residential Unit Owner, after giving notice (as herein described) to the Parking Unit Owner, shall have the right to immediately perform such maintenance and/or repair, at the cost and expense of the Parking Unit Owner. Such maintenance and repair shall be performed by the Residential Unit Owner in a good and workmanlike manner in accordance with all Applicable Law. Before exercising any of its rights under this Section 1.2.1, the Residential Unit Owner shall give the Parking Unit Owner notice and three (3) business days to remedy such condition, except in emergency

situations as reasonably determined by the Residential Unit Owner, where only such notice (if any) is reasonable under the circumstances shall be required, as long as notice is given as soon as practicable thereafter.

1.3 Loitering/Public Nuisance. The Parking Unit Owner shall undertake commercially reasonable efforts to discourage loitering in or about the Parking Unit and shall use commercially reasonable efforts to prevent any public nuisance from occurring in or about the Parking Unit.

### **LOADING AND DELIVERY**

2.1 Hours for Delivery. The Unit Owners shall permit deliveries, loading, and unloading of merchandise, supplies, furniture, equipment, and other property only during the hours of 7:00 a.m. to 10:00 p.m.

2.2 Use of Loading Docks. No Unit Owner shall permit the loading or unloading of merchandise, supplies, furniture, equipment, or other property outside of the loading areas except for routine deliveries from commercial delivery service providers (such as for example Federal Express or UPS). Each Unit Owner shall use commercially reasonable efforts to prevent the parking or standing outside of any loading area by delivery vehicles or equipment engaged in loading or unloading. Except for any loading areas that constitute Limited or Reserved Common Elements, the loading areas shall be used by the Unit Owners and the occupants of the respective Units on a first-come, first served basis. Except in any loading area that constitutes Limited Common Elements appurtenant to the Residential Unit, the Residential Unit Owner agrees (a) to stagger the scheduling of move-ins and move-outs by residents so that no more than one move is scheduled to be in process in any one of such loading areas at any specified time, and (b) that notwithstanding unanticipated overlap in move-ins and move-outs of residents, at least one service bay of each such loading area shall be available for use at any given time by occupants of the Commercial Unit. If the Residential Unit Owner notifies the Commercial Unit Owner reasonably in advance of the hours during which the Residential Unit Owner anticipates a resident move-in or move-out and its desire to use a particular loading area in connection therewith, then at least one service bay of such loading area shall be available for use for such resident move-in or move-out.

2.3 Interference with Travel Lanes and Garage. Each of the Unit Owners shall use its commercially reasonable efforts to prohibit the parking or standing of delivery vehicles that interfere with the use of any access or travel lanes or the parking facilities within the Parking Unit or impede the flow of traffic.

### **USE OF OUTDOOR AREAS**

3.1 Description of Outdoor Area. The "Outdoor Area" is that portion of the General Common Elements depicted on Exhibit B attached hereto, and includes outdoor restaurant seating, common walkways, and other pedestrian areas. Except as expressly set forth in Sections 3.2 [Outdoor Dining and Common Seating Areas], 3.3 [Outdoor Activities] and 3.4 [Kiosks], no



portion of the Outdoor Area shall be used for any purpose other than pedestrian access, ingress and egress.

### 3.2. Outdoor Dining and Common Seating Areas.

3.2.1. The Commercial Unit Owner may permit any restaurant operator that occupies space within the Commercial Unit to use sidewalk space adjoining or within any such restaurant or café or the sidewalk areas along the curb opposite the storefront of any such restaurant or café for outdoor dining (an "Outdoor Dining Area"), subject to the terms of these Rules and Applicable Law. The Commercial Unit Owner shall have priority over any other Unit Owner to use such sidewalk areas for the Commercial Unit Owner's Outdoor Dining Area. Outdoor dining shall be permitted to be conducted in the Outdoor Dining Areas only during the hours of 7:00 a.m. until 12:00 a.m. of the next day on Sundays through Wednesdays and during the hours of 7:00 a.m. until 2:00 a.m. of the next day on Thursdays, Fridays, Saturdays, holidays and evenings prior to holidays recognized by applicable governmental authorities and commonly recognized holidays. The Outdoor Dining Area to be used by any restaurant operator shall be designated as a Reserved General Common Element for the Commercial Unit under Section 2.5(c) of the Declaration and the responsibility for the maintenance, cleaning and repair, and cost of same, when the Outdoor Dining Area is designated as a Reserved General Common Element for the Commercial Unit, shall be that of the Commercial Unit Owner. During such times that any Outdoor Dining Area is not used by a restaurant operator for a significant period of time (such as, for example during the winter months) the routine maintenance and operation (and repair and replacement to the extent damage to any such Outdoor Dining Area is not caused by the negligence or willful act or omission of the Commercial Unit Owner, its tenants, subtenants, licensees, employees, invitees, contractors or agents) of such area shall be the responsibility of the Commercial Management District for the Project or the Board of Directors, as applicable, and the cost of same if performed by the Board of Directors shall be a General Common Expense. The Commercial Unit Owner shall provide in any lease, sublease, license agreement or other occupancy agreement with a restaurant operator that occupies space within the Commercial Unit that includes Outdoor Dining Areas that such tenant or occupant shall clean its Outdoor Dining Area and maintain it in a First Class condition; provided, however, notwithstanding such lease provision, the Commercial Unit Owner shall continue to be responsible for cleaning the Outdoor Dining Areas and maintaining them in a First Class condition.

3.2.2. The Commercial Unit Owner may place a reasonable number of chairs, tables and benches (the "Common Area Seating") within the Outdoor Area in locations other than the Outdoor Dining Areas (the "Public Outdoor Area") for use by guests, invitees and/or other permittees (including residents and their guests) provided that the Common Area Seating does not unreasonably impede or interfere with pedestrian access, ingress and egress through and across the Public Outdoor Area. The Common Area Seating may be used by such guests, invitees and/or other permittees for consumption of food and beverages either purchased on the Property or purchased elsewhere and brought onto the Property, but no restaurant operator occupying space within the Commercial Unit or any other person shall serve food or beverages within, or to guests, customers, invitees and/or other permittees on the Property using, the Common Area Seating. The Board of Directors or the Commercial Management District, as applicable, shall cause the Common Area Seating to be cleaned and otherwise maintained in a

3

First Class condition and the cost of such cleaning and maintenance if performed by the Board of Directors shall be a General Common Expense, or a Special Maintenance Expense as set forth on Exhibit E of the Declaration, or as otherwise determined by the Board of Directors.

3.3 Outdoor Activities. The Commercial Unit Owner may use on a periodic basis the Public Outdoor Area for other special activities and events so long as such activities and events (i) are conducted in a safe and orderly manner and in compliance with all Applicable Law and all other provisions of the Declaration, the Bylaws and these Rules, (ii) are in keeping with, and will promote or enhance, the First Class quality and perception of the Property, and (iii) will not create such amounts or volume of noise, congestion, odors, or light so as to materially disrupt or materially interfere with the use and enjoyment by residents of their respective residential unit located within the Residential Unit or by tenants of the Commercial Unit of their respective leased premises located within the Commercial Unit. Examples of activities or events that may be conducted in the Public Outdoor Areas (for illustrative purposes only and provided that such activities or events comply with the foregoing provisions of this Section 3.3) are art shows, farmer's market, antique festivals, and certain types of live performances. No activities or events shall be conducted in the Public Outdoor Areas at any time before 9:00 a.m. or after 11:00 p.m. The Commercial Unit Owner shall notify the Residential Unit Owner and Parking Unit Owner in writing at least ten (10) days prior to any such activity or event, which notice shall describe in reasonable detail the type of activity or event that will be conducted and shall specify the dates on and hours during which such activity or event will be conducted. The Residential Unit Owner shall have the right to use the Public Outdoor Areas for special activities and events so long as such activities and events comply with the requirements set forth above and are coordinated with the property manager of the Commercial Unit so as not to materially interfere or conflict with any scheduled activity or event on the Public Outdoor Areas by the Commercial Unit Owner. Unless the Unit Owners agree otherwise, each Unit Owner shall be responsible for the cost of any activity or event it chooses to conduct or sponsor in the Public Outdoor Area and all associated costs for cleaning and repairs.

3.4 Kiosks. Subject to Applicable Law, the Commercial Unit Owner shall have the right to permit the use of portions of the Public Outdoor Areas for the erection or installation of up to ten (10) kiosks or carts (2 permanent kiosks and 8 moveable kiosks or carts) within the entire Project for the sale of goods and services, provided that (i) such kiosks or carts do not unreasonably impede pedestrian access, ingress, and egress through and across the Public Outdoor Area and otherwise comply with these Rules and the restrictions set forth in Article 8 of the Declaration, (ii) the appearance of such kiosks or carts are compatible and in keeping with a First Class project, and (iii) no kiosk or cart shall be used for the offering for rent or sale, or for the distribution or dissemination of information regarding the rental of apartment units or sale of residential condominium units other than those located within the Project. No kiosk or cart shall be operated or open for business in the Public Outdoor Areas at any time before 6:00 a.m. or after 11:00 p.m. The moveable kiosks shall be spaced not less than seventy-five feet (75') apart from each other. The Residential Unit Owner shall have the right to use one of the ten (10) permitted kiosks or carts, in a location within the Public Outdoor Areas reasonably acceptable to the other Unit Owners, for the distribution or dissemination of information regarding the rental or sale of residential units within the Property, subject to clauses (i) and (ii) above and provided that such kiosk or cart shall not be operated or open for business in the Public Outdoor Areas at

any time before 6:00 a.m. or after 11:00 p.m.

**HOURS OF OPERATION, CONSTRUCTION  
ACTIVITIES, MAINTENANCE, APPEARANCE AND REFUSE**

4.1 General Standard. The Commercial Unit Owner and the Residential Unit Owner shall keep their respective Units and the respective Reserved General Common Elements and Limited Common Elements to which such Unit Owners have been assigned the upkeep responsibilities, in a First Class condition. The Parking Unit Owner shall maintain the Parking Unit in the condition specified in Section 1.2 of these Rules [Maintenance Standards]. No use shall be permitted of any Unit that constitutes a public or private nuisance or that generates excessive litter, dust or dirt that can be seen outside of a Unit or is an unsanitary use that directly causes, attracts or facilitates the infestation of rodents, vermin or other pests and that use remains unabated.

4.2 Trash Removal. Each Unit Owner shall and shall cause the occupants of its respective Unit to place trash, garbage and refuse in proper containers in the designated trash areas and/or trash rooms that serve the Property, and each Unit Owner shall cause its occupants to keep and maintain such trash areas and/or trash rooms in good, clean First Class condition. If a Unit Owner is in breach of its obligations under this Section 4.2, then any non-defaulting Unit Owner may cure such breach in accordance with Section 7.2(c)(i) of the Bylaws. The Commercial Unit Owner shall cause each occupant of the Commercial Unit that is a restaurant or food service operator to install garbage disposal equipment or wet garbage storage facilities to serve such occupant's premises that are adequate to minimize any obnoxious odors resulting from wet trash or garbage.

4.3 Signage. The signage used at the Property by the Unit Owners/and or their occupants shall at all times conform in all respects to the signage criteria set forth in Exhibit C attached hereto (the "Signage Criteria"). The Signage Criteria shall not be modified or amended without the prior written approval of the Council of Unit Owners, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the preceding provisions of this Section 4.3, each Unit Owner agrees that (i) except as provided in the Signage Criteria, no signs shall be placed on the outside of or on any roofs of any portion of the Property, (ii) all signs must be professionally designed, (iii) no signs shall be permitted that flash, blink, or otherwise light in an alternate fashion, and (iv) directional signage and other signage within the Parking Unit required by Applicable Law shall not be subject to the prior written approval of the Council of Unit Owners. All signage shall be subject to Applicable Law. Except for the signage in the Parking Unit, all signs shall be maintained in First Class condition, operating order, and repair at all times. Signage within the Parking Unit shall be maintained in accordance with the generally prevailing standards governing the maintenance of signage in other governmentally owned parking facilities in the County.

4.4 Outside Storage. The Commercial Unit Owner shall not permit outside storage of any merchandise, supplies, or other property (except for the limited right of tenants of the Commercial Unit Owner to conduct temporary sidewalk sales so long as such sales do not unreasonably impede pedestrian access through, over, and across the sidewalks). To the extent

permitted by Applicable Law, the Residential Unit Owner shall prohibit the residents of the Residential Unit from hanging towels, articles of clothing, or other items on rails of, and shall prohibit residents of the Residential Unit from storing personal property on, the balconies of the residential units within the Residential Unit; provided, however, that the placement of patio furniture or bicycles or a Telecommunications Device allowed to be installed by residents of the Residential Unit in accordance with Applicable Law (as more particularly described in Section 4.5 below [Telecommunications Devices] on the balconies of the residential units within the Residential Unit shall not constitute a violation of the foregoing prohibition.

4.5 Telecommunications Devices. Each Unit Owner agrees that it shall not permit the use of any portion of its respective Unit for the installation or location of antennas, satellite dishes, and other similar telecommunications devices or equipment (a “**Telecommunications Device**”) for use by third parties not providing service to the Unit without the prior reasonable consent of the other Unit Owners; provided, however, that a Telecommunications Device installed by any residents of the Residential Unit outside their residential units shall be allowed only so long as and to the extent such right to do so is mandated by Applicable Law. Any Telecommunications Device installed or located on any Unit and providing service to the Unit or to a tenant within a Unit (except for any Telecommunications Device that any resident of the Residential Unit is allowed by Applicable Law to install or locate on or outside its residential unit) shall be installed on the Unit at such a location, and screened from view in such a manner, so as to be as aesthetically pleasing as feasibly possible and consistent with the location and screening of similar items located in First Class projects. The Unit Owners agree to consult and reasonably cooperate with each other on a case by case basis when the need or right to install a Telecommunications Device arises so as to collectively determine the best possible location and screening for such Telecommunications Device.

4.6 Construction Activities. Due to the importance of holiday sales to the Commercial Unit, except in cases of emergency, no exterior work or any construction activities shall be performed during retail operating hours from the period of November 1 through January 15 if such exterior work or construction activities would have any potential disruptive effect on the Commercial Unit, as reasonably determined by the Commercial Unit Owner, unless the prior written consent of the Commercial Unit Owner is obtained.

## **NOISE, ODORS AND LIGHTING**

5.1 Noise. Each Unit Owner agrees (i) to keep all mechanical equipment and other improvements located on or within its Unit, or installed by such Unit Owner for its sole use elsewhere on the Property, free of vibration and noise that may be transmitted beyond such mechanical equipment or improvements; (ii) to prohibit the use by occupants of its respective Unit of any apparatus for sound reproduction or transmission (including, but not limited to, loudspeakers, compact disc players, public address systems, sound amplifiers, radios, television sets, or any musical instruments) in any manner so as to be heard outside of such Unit Owner's Unit, (iii) not to allow or permit any other types of noise or vibration to emanate from the Improvements located on such Unit Owner's Unit in any manner so as to be heard or felt beyond the Improvements located on such Unit Owner's Unit or to emanate from outside the Improvements located on any portion of such Unit Owner's Unit in any manner as to constitute a

nuisance or to interfere with the safety, comfort, or convenience of any occupant of the Improvements on any other Unit Owner's Unit, and (iv) not schedule fire alarm testing during the periods from 11:00 a.m. to 2:00 p.m. and/or from 6:00 p.m. to 8:00 a.m. on any given day. The Residential Unit Owner has been provided with a copy of the Commercial Unit Owner's standard form of technical criteria for commercial tenants' improvements for roofing, mechanical, electrical, plumbing and restaurant equipment which is or will be "Exhibit B-2" of the commercial tenants' leases with the Commercial Unit Owner as well as the technical specifications for any existing tenants. The Residential Unit Owner has acknowledged its approval and acceptance of the technical criteria set forth in "Exhibit B-2" or other technical specifications for any existing leases (collectively, the "Pre-Approved Technical Specifications"). Provided that such mechanical and other apparatus are installed, maintained and operated in accordance with the Pre-Approved Technical Specifications, then such mechanical and other apparatus shall be deemed to be properly installed, maintained and operated by the Commercial Unit Owner, its tenants and/or subtenants and not in violation of this Section 5.1. All equipment installed by a Unit Owner on the roof of any improvements located on the Property must be installed, operated and maintained in accordance with the Pre-Approved Technical Specifications. If a tenant leasing space within the Commercial Unit shall have technical criteria governing the installation, maintenance or operation of such mechanical or other apparatus that materially deviates from the Pre-Approved Technical Specifications, then the Residential Unit Owner shall have the right to approve such deviation for the purpose of reconciling such criteria with the Pre-Approved Technical Specifications, such approval not to be unreasonably withheld. Notwithstanding the foregoing provisions of this Section 5.1, subject to the County noise ordinance, the Commercial Unit Owner may permit any restaurant operator that has an Outdoor Dining Area to play recorded music through loudspeakers within the confines of the Outdoor Dining Area provided that no such music may be played before 9:00 a.m. or after 12:00 a.m. on the next day on Sundays through Wednesdays and before 9:00 am or after 12:00 a.m. of the next day on Fridays, Saturdays, holidays and the evenings prior to holidays recognized by applicable governmental authorities and commonly recognized holidays.

5.2 Odors. No Unit Owner shall cause or permit obnoxious food odors or other objectionable odors to emanate or be dispelled from its respective Unit. The Commercial Unit Owner shall not permit the use of any portion of the Commercial Unit for restaurant use except for areas that are sufficiently equipped with ventilation. Provided that such ventilation equipment and other apparatus are installed, maintained and operated in accordance with the Pre-Approved Technical Specifications (defined above in Section 5.1), then such ventilation and other apparatus shall be deemed to be properly installed, maintained and operated by the Commercial Unit Owner, its tenants and/or subtenants and not in violation of this Section 5.2. If a tenant of the Commercial Unit shall have technical criteria that materially deviates from the Pre-Approved Technical Specifications, then the Residential Unit Owner shall have the right to approve such deviation for the purpose of reconciling such criteria with the Pre-Approved Technical Specifications, such approval not to be unreasonably withheld. The Commercial Unit Owner shall not permit the use of any portion of the Commercial Unit as a pet store, nail salon, or beauty parlor unless such portion of the Commercial Unit provided for such use is equipped with sufficient ventilation to prevent obnoxious or objectionable odors from unreasonably emanating into the occupied portions of the Residential Unit, and any such odors emanating from such space shall not be deemed "obnoxious" or "objectionable" if the ventilation is designed,

engineered, installed, maintained and operated in accordance with similar First Class mixed use projects.

5.3 Lighting. Each Unit Owner agrees to abide by the lighting plans submitted to the City of Rockville and the lighting criteria that has been or shall be jointly prepared by the Unit Owners. The lighting plan and the lighting criteria shall not be modified or amended, and there shall be no changes in lighting for the Outdoor Area without the consent of the Council of Unit Owners.

5.4 Prompt Enforcement. If any Unit Owner believes that another Unit Owner or any of its occupants, tenants, licensees, guests, invitees or other permittees is in violation of the provisions of Sections 5.1 [Noise], 5.2 [Odors] and 5.3 [Lighting] herein, such Unit Owner, through its property manager or other authorized representative, may notify the property manager or other authorized representative of another Unit Owner (which notification may be made orally (subject to a follow-up notice in writing), either by telephone or in person), and such notified Unit Owner shall immediately take commercially reasonable measures to alleviate any violation, including (without limitation) notifying the offending occupant, tenant, licensee, guest, invitee or other permittee on or in its Unit of the alleged violation and requesting the offending occupant, tenant, licensee, guest, invitee or other permittee to take appropriate action to alleviate such violation. Notwithstanding the foregoing provisions of this Section 5.4, no Unit Owner shall be deemed to be in default under the Declaration, the Bylaws or these Rules because of any alleged violation of the provisions of Sections 5.1 [Noise], 5.2 [Odors], or 5.3 [Lighting] above or this Section 5.4 unless and until written notice of such default shall have been given in accordance with Section 7.2(c)(i) of the Bylaws.

### **ENFORCEMENT, MODIFICATION AND AMENDMENT**

6.1 Enforcement. These Rules form a part of the Condominium Documents, and consequently, the enforcement of these Rules, including the remedies available for any violation or breach of, or default under, these Rules shall be governed by the provisions of Article 7 of the Bylaws [Compliance and Default], Section 11.13 [Excusable Delay] and Section 11.14 [Arbitration of Disputes] of the Declaration.

6.2 Writing Required to Amend. These Rules may not be terminated, canceled, changed, waived, modified, or amended in whole or in part without the written consent or approval of each of the Unit Owners affected by such termination, cancellation, change, waiver, modification or amendment.

6.3 Failure to Respond. If any Unit Owner fails either to consent to a written request for any change, waiver, modification, or amendment to these Rules or to respond to such request with specific objections within thirty (30) days after receipt of such request from any Unit Owner, then such failure shall be deemed to constitute a consent and approval of the proposed change, waiver, modification, or amendment to these Rules. The request shall contain the following statement in bold face type:

A UNIT OWNER OF THE ROCKVILLE TOWN SQUARE BLOCK 5 CONDOMINIUM HEREBY NOTIFIES YOU THAT IT IS REQUESTING A CHANGE, WAIVER, MODIFICATION OR AMENDMENT TO THE RULES AND THAT YOUR FAILURE TO RESPOND WITHIN TEN (10) DAYS AFTER RECEIPT OF THIS NOTICE SHALL MEAN THAT YOU SHALL BE DEEMED TO HAVE CONSENTED AND APPROVED OF THE PROPOSED CHANGE, WAIVER, MODIFICATION OR AMENDMENT TO THE RULES.

6.4 No Recording. The Unit Owners agree that these Rules shall not be recorded in the Land Records.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has caused these Rules to be adopted as of the \_\_\_\_th day of \_\_\_\_\_, 2005.

**RTS RESIDENTIAL BLOCK 5, LLC,**  
A Delaware Limited Liability Company

By: RTS-RD Rockville Investments II, LLC,  
A Delaware Limited Liability Company,  
Sole Member and Manager

By: RTS-RD Rockville Management II, LLC,  
A Delaware Limited Liability Company,  
Manager

By: RTS-RD Rockville, LLC,  
A Delaware Limited Liability Company,  
Sole Member and Manager

By: RD Rockville, LLC,  
A Maryland Limited Liability Company,  
Sole Member and Manager

By: RD Maryland Avenue Limited  
Partnership,  
A Maryland Limited Partnership,  
Sole Member and Manager

By: RD Commerce Street, LLC,  
A Maryland Limited Liability  
Company, General Partner

By: S.J. Ross Associates,  
Inc., A Maryland  
Corporation,  
Its Manager

By: \_\_\_\_\_  
Scott J. Ross,  
President



## Exhibit A

### Parking Unit Maintenance, Cleaning and Inspection Specifications

The Parking Unit Owner will provide the same level of the then current "maintenance and cleaning functions" provided in other governmentally owned public parking facilities in Montgomery County. The Parking Unit Owner will use reasonable efforts to schedule and perform the reasonably foreseeable maintenance and cleaning services in a manner that minimizes adverse impacts on the parking spaces intended to satisfy public demands for parking.

#### Routine Cleaning and Maintenance

The anticipated routine cleaning and maintenance services for the Parking Unit are as follows:

##### Garage Sweeping

Description: Mechanical and manual sweep all areas of garage except interior of stairwells/elevators, and storage areas.

Frequency: Every two (2) weeks.

##### Litter Pickup

Description: Pick up all litter in all areas of the Parking Unit.

Frequency: Weekly.

##### Cleaning of Stairtowers, and Elevator Lobbies

A. Description: Inspect, paper chase, spot sweet, remove all trash, debris and other unnatural substances.

Frequency: Weekly.

B. Description: Sweep stairtowers, and elevator lobbies, clean all stairtower window ledges, wipe down all hand railings and stair stringers and, weather permitting, wet mopping and disinfect.

Frequency: Every two (2) weeks.

AP

### Washdown/Scrubbing

- Description: Washdown decks, raised platforms and guardrails.
- Before and after washdown, all drains shall be checked to see that they are functioning properly.
- Frequency: Semi-annually (i.e., two (2) times per year).

### Other Items As Needed

- Description: Snow removal and ice control.  
Relamping and cleaning of garage light fixtures.

### Annual Inspection

The Parking Unit Owner shall inspect the Parking Unit annually to determine any deficiencies within the structure, driveways, and walkways, prepare a written report indicating the findings, recommendations, and priorities of repairs or need for more detailed investigations. The Parking Unit Owner shall perform the following annual inspection program:

- I. Determine the type, extent, cause and effects of problems related to the parking facility.
  - A. Review existing construction drawings, specifications, construction reports and testing comments.
  - B. Conduct a thorough field examination of the structural system and note the physical condition.
    1. Concrete Slabs
      - a) Visual Inspection
        - (1) Floor
        - (2) Ceiling
        - (3) Floor Coatings
      - b) Delamination Inspection
        - (1) Floor
        - (2) Ceiling
      - c) Protective Sealer
    2. Beams, columns, precast concrete, and connectors
      - a) Visual Inspection
        - (1) Columns
        - (2) Beams
        - (3) Precast Concrete

- (4) Connections
    - 3. Joint-Sealant Systems
      - a) Visual Inspection
        - (1) Expansion joints
        - (2) Construction joints
        - (3) Control joints
        - (4) Cracks previously routed and sealed
    - 4. Stair Towers and Mechanical Rooms
      - a) Visual Inspection
        - (1) Stairs and landings
        - (2) Walls
        - (3) Glass
        - (4) Doors and hardware
    - 5. Mechanical/Electrical Systems
      - a) Drainage system (includes oil/grit separator and pumps)
      - b) Watering system
      - c) Ventilation equipment
      - d) Fire protection
      - e) General lighting
      - f) Exit and emergency lighting
      - g) Washdown system
    - 6. Paint
    - 7. Exterior Items
      - a) Driveways
      - b) Walkways
  - C. Photographs may be taken to provide visual reference.
- II. Prepare a written report indicating the findings, alternatives, repairs, recommendations, costs, prioritized repairs and cost benefit analysis.
- A. Make a structural analysis for the stability and safety of the parking structure and its elements in relation to the repair and renovation problems. Also recommend any testing that may be needed.
  - B. Perform value engineering/life cycle analysis for various construction materials, equipment and repair techniques used for repair and renovation of parking structures to determine the best performance service length and cost effectiveness.
  - C. Recommend any testing and repairs, with related costs, that are immediately necessary for the continuing safety of the facility patrons.
  - D. Evaluate and present restoration program alternatives and costs.

**Exhibit B**

Outdoor Area  
(attached)

**Exhibit C**

Signage Criteria  
(attached)

---

A significant part of the construction contract is the contract between RDRG and Whiting-Turner Contracting Company (W-T) (circle 62). That contract sets forth the actual construction items and costs for the three garages. The RDRG and W-T contract also addresses general conditions, scope, warranties, compensation, insurance, bonds, schedule, change orders, etc. Although the City did not negotiate the contract with W-T, staff did review and comment on it. The garage construction contract between RDRG and W-T involves heavily modified AIA documents A201 and A111. The basis for payment is "the cost of work plus a fee with a negotiated guaranteed maximum price."

The GMP for Block 5 Garage is \$8,884,250 (see attachment C to the A201 (Circle 166)). Approval of the contract will authorize the full amount of the GMP for Block 5. The contract documents show a budgeted GMP for Block 1/2 in the amount of \$11,199,250. Last week the City received notification that the GMP for Block 1/2 will be \$11,192,250. The GMP for Block 4 is still considered a budget in the amount of \$19,593,500. A final GMP for Block 4 is expected in April. Approval of this agenda item will also authorize the City Manager to issue a notice to proceed for the Block 4 garage provided that the GMP for Block 4 is less than the budgeted amount.

RDRG will receive a fee to manage the construction of the three garages. That fee is fixed at \$1,544,000, to be paid on a monthly basis. If there are change orders that increase or decrease the scope of work, RDRG would receive 4% of the cost of that work. In addition, RDRG will be compensated for reimbursables (i.e., copies, office supplies, etc.). Reimbursables, for the purposes of this agenda item, is estimated at \$26,000.

Change orders will be handled in the same manner as with the Public Improvements Contract. The Project Manager for RDRG will be authorized to approve single change orders less than \$25,000 up to a total of \$100,000. Once the \$100,000 limit is reached, the City must authorize the Director of Finance to do additional change orders.

A copy of the agenda sheet discussing the construction contract for the Mayor and Council meeting on December 13, 2004 is attached for additional information. That agenda sheet includes a memorandum for Venable summarizing the construction contracts.

Sections 17-85 and 17-88 of the City Code allows the City to utilize a special procurement procedure if the Mayor and Council make a written determination that a unique or unusual circumstance exists that makes competitive procurement process contrary to the City's interest. There must be a written record of the reasons justifying the special procurement.

**Next Steps:** Approve the contract and issue notice to proceed for all of Block 5, all of Block 1/2 and a portion of Block 4 once the GMP for Block 4 is finalized, a full notice to proceed will be issued by the City Manager.

---

---

**PREPARED BY:**

Arthur D. Chambers  
Arthur D. Chambers, AICP, Director, CPDS

3/02/05  
Date

**APPROVED BY:**

Scott Ullery  
Scott Ullery, City Manager

3/02/05  
Date

---

**LIST OF ATTACHMENTS:**

1. Construction Contract with RDRG.  
GMP Prices, circle 166
2. Construction contract between RDRG and Whiting Turner.
3. Mayor and Council agenda sheet for December 13, 2004.

---

S. Briefbook Items - Mayor and Council 3/7/05 RD Rockville LLC contract for construction of garage - Art.doc

DRAFT

# AIA Document A191™ - 1996 Part 2

## Standard Form of Agreement Between Owner and Design/Builder Part 2 Agreement

### TABLE OF ARTICLES

#### PART 2 AGREEMENT

1. GENERAL PROVISIONS
2. OWNER
3. DESIGN/BUILDER
4. TIME
5. PAYMENTS
6. PROTECTION OF PERSONS AND PROPERTY
7. INSURANCE AND BONDS
8. CHANGES IN THE WORK
9. CORRECTION OF WORK
10. DISPUTE RESOLUTION - MEDIATION AND ARBITRATION
11. MISCELLANEOUS PROVISIONS
12. TERMINATION OF THE AGREEMENT
13. BASIS OF COMPENSATION
14. OTHER CONDITIONS AND SERVICES

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form: An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AGREEMENT made as of the 12th day of July in the year of 2005  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name and address)

The Mayor and Council of Rockville  
111 Maryland Avenue  
Rockville, MD 20850

and the Design/Builder:  
(Name and address)

R.D. Rockville Garage, LLC  
c/o Danac Corporation  
7501 Wisconsin Avenue, Suite 1120  
Bethesda, MD 20814

For the following Project:  
(Include Project name, location and a summary description.)

Design and construction of three new public parking facilities (garages), to be owned by the City of Rockville (the "City"), located on parcels owned by the City and known as Blocks 1/2, 4 and 5 of the Rockville Town Center Project in Rockville, Maryland. The Block 1/2 garage will contain approximately 537 parking spaces, the Block 4 garage will

ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

④ ①



contain approximately 1,048 parking spaces, and the Block 5 garage will contain approximately 281 parking spaces. The garage areas will be poured in place and precast concrete construction.

The architectural services described in Article 3 will be provided by the following person or entity who is lawfully licensed to practice architecture:

Name and address	Registration Number	Relationship to Design/Builder
WDG Architecture, PLLC 1025 Connecticut Avenue, NW Suite 300 Washington, DC 20036		

Normal structural, mechanical and electrical engineering services will be provided contractually through the Architect except as indicated below:

Name, address and discipline	Registration Number	Relationship to Design/Builder
N/A		

The Owner and the Design/Builder agree as set forth below.

## TERMS AND CONDITIONS – PART 2 AGREEMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 BASIC DEFINITIONS

§ 1.1.1 The Contract Documents consist of the Part 1 Agreement to the extent not modified by this Part 2 Agreement, this Part 2 Agreement (including all Exhibits described in Section 14.5), the Construction Documents approved by the Owner in accordance with Section 3.2.3 and Modifications issued after execution of this Part 2 Agreement. A Modification is a Change Order or a written amendment to this Part 2 Agreement signed by both parties, or a Construction Change Directive issued by the Owner in accordance with Section 8.3. All Change Orders, Applications and Certificate of Payment, Certificates of Substantial Completion, and other forms during Construction shall be the current AIA form, or modifications thereto or other form approved by Owner. In the event of a conflict between the Contract Documents, the provision requiring the Design/Builder to provide the greater level of service or the greater quality or quantity of materials shall govern.

§ 1.1.2 The term "Work" means all required excavation, base building and interior construction required by and reasonably inferable from the Contract Documents to achieve a complete and functioning Project. The Work includes all labor, materials, equipment and services, including but not limited to delivery, storage, handling and installation of all materials and equipment, as well as related and incidental Work, provided or to be provided by the Design/Builder to fulfill the Design/Builder's obligations, as set forth in the Contract Documents and as performed in accordance with the Contract Documents and applicable Legal Requirements (as defined in this Part 2 Agreement).

The Work also includes, and this Part 2 Agreement applies to, the Work performed pursuant to the "Modification to July 29, 2004 Rockville Town Center Public Improvement Agreement Between the Mayor and Council of Rockville and the Whiting-Turner Contracting Company ("the PI Modification"). Payments made or to be made pursuant to the PI Modification are presumed to have been made pursuant to the terms of this Contract.

§ 1.1.2.1 An essential understanding between the parties with respect to the scope of the Design/Builder's services is that the Design/Builder acknowledges and agrees that the Project is to be built in accordance with the portions of the Amended and Restated General Development Agreement for the Redevelopment of the Rockville Town Square dated June 14, 2004 and the General Development Agreement for Block 4 Public Parcel of Rockville Town Square dated June 14, 2004 (together, the "GDA") that address the Public Parking Facilities.

#### 1.1.3 DESIGN/BUILDER'S SOLE COST OR EXPENSE

When the words "Design/Builder's sole cost," "Design/Builder's sole expense," or words of similar affect are used in the Contract Documents, it shall be construed to mean that the cost or expense is a non-reimbursable expense under the Agreement. When the words "the Design/Builder shall pay for" or words of similar affect are used, it shall be construed to mean that the cost or expense is reimbursable. When the word "Subcontractor" is used, it shall mean any entity to whom Design/Builder subcontracts out Work to include a general contractor and all of its subcontractors. When the word "General Contractor" is used, it shall mean Design/Builder's general contractor.

#### § 1.2 EXECUTION, CORRELATION AND INTENT

§ 1.2.1 It is the intent of the Owner and Design/Builder that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Design/Builder shall be required to produce the intended results and to the extent needed to produce a complete and functioning Project regardless of whether such item is specifically identified in the Contract Documents. Full-size or large-scale details or drawings shall govern small-scale drawings that the former are intended to amplify. Dimensions shall be figured rather than determined by scale or rule. Where the Drawings and Specifications conflict with each other or with themselves, the Design/Builder will decide which conflicting requirement governs. Words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.2 If the Design/Builder believes or is advised by the Architect or by another design professional retained to provide services on the Project that implementation of any instruction received from the Owner would cause a violation of any applicable law, the Design/Builder shall notify the Owner in writing. Neither the Design/Builder nor the Architect shall be obligated to perform any act which either believes will violate any applicable law.

§ 1.2.3 Nothing contained in this Part 2 Agreement shall create a contractual relationship between the Owner and any person or entity other than the Design/Builder.

§ 1.2.4 Design/Builder's obligations set forth in this Agreement may be satisfied either through its own forces or by its Subcontractors, including but not limited to its Architect and the General Contractor, but the Design/Builder shall be responsible to Owner for all obligations contained in this Agreement such work regardless of whether performed by its own forces or by its Subcontractors.

### § 1.3 OWNERSHIP AND USE OF DOCUMENTS

§ 1.3.1 Drawings, specifications, and other documents and electronic data furnished by the Design/Builder (collectively "Design Documents") are instruments of service. The Design/Builder's Architect and other providers of professional services shall retain all common law, statutory and other reserved rights, including copyright in those instruments of service furnished by them. Except as provided in paragraphs 1.3.2, the Design Documents are furnished for use solely with respect to this Part 2 Agreement. The Owner shall be permitted to retain copies, including reproducible copies, of the Design Documents for information and reference in connection with the Project, except as provided in Paragraphs 1.3.2 and 1.3.3.

1.3.2. Provided that Design/Builder has been paid in accordance with the Part 1 Agreement, the Owner or the Owner's designees shall have the right to use the Design Documents furnished by the Design/Builder without the written permission of the Design/Builder or its Architect on other projects, for additions to this Project or for completion of this Project by others.

1.3.2.1 The Owner shall indemnify the Design/Builder for any loss, cost, damages or expense to the Design/Builder resulting from any modification of the Design Documents by the Owner, its agents, or its contractors (except the Design/Builder), without the Architect or Design/Builder's consent or any use of the Design Documents by the Owner, its agents, or its contractors (except the Design/Builder) other than the use intended under this Agreement.

1.3.3 If the Design/Builder defaults in the Design/Builder's obligations to the Owner, the Architect or Design/Builder, as applicable, shall grant a license to the Owner to use the Design Documents furnished by the Architect to the Design/Builder for the completion of the Project, conditioned upon the Owner's execution of an agreement to cure any Design/Builder's default in payment to the Architect for services previously performed and to indemnify the Architect with regard to claims arising from such reuse without the Architect's professional involvement.

§ 1.3.4 Submission or distribution of the Design/Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section 1.3.1.

### 1.4 CONFIDENTIALITY

1.4.1 The Design/Builder warrants and represents that the Design/Builder shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Part 2 Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Design/Builder, or (iv) as may be required to perform the Work or by any applicable law.

1.4.2 The Design/Builder shall require all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work, not to include the Architect, to warrant and represent all items set forth in this Paragraph 1.4.

1.4.3 The representations and warranties contained in this Paragraph 1.4 shall survive the complete performance of the Work or earlier termination of this Agreement.

1.4.4 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Design/Builder as a result of the Design/Builder's discussions with the Owner or performance of the Work, that are based substantially on the Owner's proprietary information shall be the sole and exclusive property of the Owner. The Design/Builder agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Design/Builder agrees to assign, or cause to be assigned, such inventions and discoveries

to the Owner. Further, the Design/Builder shall execute, or cause to be executed, all applications, assignments or other instruments which the Owner may deem reasonably necessary to enable the Owner, at Owner's expense, to apply for, prosecute and obtain patents in any country for said inventions and discoveries, or to assign and transfer to the Owner the entire right, title and interest thereto.

## ARTICLE 2 OWNER

§ 2.1 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Design/Builder and shall render decisions in a timely manner and in accordance with the schedule accepted by the Owner. The Owner may obtain independent review of the Contract Documents by a separate architect, engineer, contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ 2.2 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Design/Builder agree in writing.

§ 2.3 The Owner shall cooperate with the Design/Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the Design/Builder's Proposal.

§ 2.4 The Owner shall furnish services of land surveyors, geotechnical engineers and other consultants for subsoil, air and water conditions, in addition to those provided under the Part 1 Agreement, when such services are deemed necessary by the Design/Builder to properly carry out the design services required by this Part 2 Agreement.

§ 2.5 The Owner shall disclose, to the extent known to the Owner, the results and reports of prior tests, inspections or investigations conducted for the Project involving: structural or mechanical systems; chemical, air and water pollution; hazardous materials; or other environmental and subsurface conditions. The Owner shall disclose all information known to the Owner regarding the presence of pollutants at the Project's site.

2.5.1 The Owner shall promptly disclose to the Design/Builder any additional information pertinent to this paragraph 2.5 of which it becomes aware. Neither this paragraph 2.5 nor any other provision of this Part 2 Agreement shall be deemed to change the Owner's responsibilities for environmental conditions and remediation under the GDA.

§ 2.6 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Design/Builder's Applications for Payment.

§ 2.7 Those services, information, surveys and reports required by Sections 2.4 through 2.6 which are within the Owner's control shall be furnished at the Owner's expense. Information or services required of the Owner by the Contract Documents shall be furnished by the Owner to the Design/Builder only upon written request of the Design/Builder with reasonable promptness and shall be complete and accurate to the best of Owner's knowledge, information and belief. Any other information or services relevant to the Design/Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design/Builder of a written request for such information or services. Design/Builder shall review all documents and information received from the Owner and, if the documents or information are observed by Design/Builder to be inadequate or if Design/Builder needs additional information, Design/Builder shall notify Owner immediately in writing.

§ 2.9 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design/Builder's Proposal or the Construction Documents, the Owner shall give prompt written notice thereof to the Design/Builder.

§ 2.10 The Owner shall, at the request of the Design/Builder, prior to execution of this Part 2 Agreement and promptly upon request thereafter, furnish to the Design/Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement. Appropriation of the money necessary to pay for the Work to be performed under this Agreement by the City as part of its Capital Improvements Program

shall be considered reasonable evidence under this Section. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work for which such compensation is required. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without notice to the Design/Builder.

§ 2.11 The Owner shall communicate with persons or entities employed or retained by the Design/Builder through the Design/Builder, unless otherwise directed by the Design/Builder.

2.12 The Owner shall not be responsible for the resolution of differences or disputes between or among the Design/Builder, its Subcontractors or Sub-subcontractors.

### ARTICLE 3 DESIGN/BUILDER

#### § 3.1 SERVICES AND RESPONSIBILITIES

§ 3.1.1 Design services required by this Part 2 Agreement shall be performed by qualified architects and other design professionals as set forth in the Part 1 Agreement. The contractual obligations of such professional persons or entities are undertaken and performed in the interest of the Design/Builder and Owner.

§ 3.1.2 The agreements between the Design/Builder and the persons or entities identified in this Part 2 Agreement, and any subsequent modifications, shall be in writing. These agreements, including financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon request.

§ 3.1.3 The Design/Builder shall be responsible to the Owner for acts and omissions of the Design/Builder's employees, Subcontractors and their agents and employees, and other persons, including the Architect and other design professionals, performing any portion of the Design/Builder's obligations under this Part 2 Agreement.

3.1.4 Design/Builder recognizes that it has been engaged by Owner as an independent contractor and acknowledges that Owner has no responsibility to provide transportation, insurance or other benefits normally associated with employee status. Design/Builder, in accordance with its status as an independent contractor, shall conduct itself consistent with such status, shall neither hold itself out as, nor claim to be, an officer, partner, employee or agent of Owner, and shall not make any claim, demand or application for any right, privilege or benefit applicable to an officer, partner, employee or agent of Owner, including, but not limited to, unemployment insurance benefits, social security coverage or retirement benefits.

#### 3.1.5 LABOR AND MATERIALS

3.1.6 Unless otherwise provided in the Contract Documents, the Design/Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.1.7 The Design/Builder shall enforce strict discipline and good order among the Design/Builder's employees and other persons carrying out the Contract Documents. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design/Builder shall use commercially reasonable efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance and shall only use labor capable of working harmoniously with all trades and crafts.

3.1.8 The Design/Builder shall maintain an adequate labor force at all times for the expeditious and proper completion of the Work. All workmen and Subcontractors shall be skilled in their respective trades.

3.1.9 The Design/Builder shall provide and maintain all temporary storage on the Project site as required for his use. The Owner shall approve the locations and length of time of storage, and these locations shall be subject to relocation upon the Owner's request.

3.1.10 The Design/Builder covenants with the Owner to furnish the Design/Builder's reasonable skill and judgment and to cooperate with all parties to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Design/Builder and other persons or entities employed by the Owner for the Project.

## § 3.2 BASIC SERVICES

§ 3.2.1 The Design/Builder's Basic Services are described below and in Article 14.

§ 3.2.2 The Design/Builder shall designate a representative authorized to act on the Design/Builder's behalf with respect to the Project.

§ 3.2.3 The Design/Builder shall submit Construction Documents for review and approval by the Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the intent of the Design/Builder's Proposal;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ 3.2.4 The Design/Builder, with the assistance of the Owner, shall file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.2.5 Unless otherwise provided in the Contract Documents, the Design/Builder shall provide labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.2.6 The Design/Builder shall be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under this Part 2 Agreement.

§ 3.2.7 The Design/Builder shall keep the Owner informed of the progress and quality of the Work.

§ 3.2.8 The Design/Builder shall be responsible for correcting Work which does not conform to the Contract Documents. the cost of which shall be a Cost of the Work (as defined in the GMP Contract), unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and the General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make all reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

§ 3.2.9 The Design/Builder warrants to the Owner that materials and equipment furnished under the Contract Documents will be of good quality and new or recent manufacture, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, that the Work will be performed in a good and workmanlike manner, and that the Work will conform to the requirements of the Contract Documents. Construction not conforming to these requirements, including substitutions not properly approved by the Owner, shall be corrected in accordance with Article 9. The Design/Builder's warranty excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Modification, extensions, attachments to, completion of, or repair to systems in the Work by others (including the Owner or tenants performing tenant improvement work), including without limiting the generality of the foregoing, the electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Design/Builder's warranty so long as the same are done in accordance with the original design and installation standards. If required by the Owner, the Design/Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished. Design/Builder shall issue in writing to the Owner as a condition precedent to the Final Payment, a General Warranty reflecting the conditions of Subparagraph 3.2.9 for all Work under the Contract Documents.

§ 3.2.10 The Design/Builder shall pay all sales, consumer, and similar taxes which had been legally enacted at the time the Design/Builder's Proposal was first submitted to the Owner.

§ 3.2.11 The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ 3.2.12 The Design/Builder shall pay royalties and license fees for patented designs, processes or products. The Design/Builder shall defend suits or claims for infringement of patent rights and shall hold the Owner harmless from loss on account thereof.

§ 3.2.13 The Design/Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Part 2 Agreement. The Design/Builder shall maintain streets, alleys, and sidewalks around the Project site in a clean condition. The Design/Builder shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. The Design/Builder is to provide sufficient means for the prompt disposal of all food trash on a daily basis. The Design/Builder is fully responsible for all rodent control until two months after Substantial Completion. Any rodent problems affecting the Owner or its tenants will be remediated by the Design/Builder. If the Design/Builder's waste materials interfere with the progress of the Work or the Owner's or any tenant's operations, the Design/Builder shall remove such waste materials and rubbish immediately. At the completion of the Work, the Design/Builder shall remove from the site waste materials, rubbish, the Design/Builder's tools, construction equipment, machinery, and surplus materials.

If the Design/Builder fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Design/Builder. The Design/Builder's cleaning of the Project site at the completion of the Work shall also include without limitation, leaving all floors mopped, and broom-cleaned; removing spots, plaster, soil and paint from ceramic tile, marble and other finished materials; removing all temporary protections, barriers, tags, labels and markings; cleaning all finishes and architectural needs (where applicable, in accordance with manufacturer's recommendations), leaving all surfaces free of dust, stains, films or other foreign substances, and removing all debris from any portion of the Project site, whether or not exposed (including, by way of example, in ductwork and on roofs).

§ 3.2.14 The Design/Builder shall notify the Owner when the Design/Builder believes that the Work or an agreed upon portion thereof is substantially completed. If the Owner concurs, the Design/Builder shall issue a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the Design/Builder shall complete items listed therein. Disputes between the Owner and Design/Builder regarding the Certificate of Substantial Completion shall be resolved in accordance with provisions of Article 10.

§ 3.2.15 The Design/Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other modifications, in good order and regularly updated to record the completed construction. These shall be delivered to the Owner upon completion of construction and prior to final payment.

3.2.16 The Design Builder shall provide quality control services throughout the Project.

3.2.17 The Design/Builder shall secure, and as soon as practicable furnish the Owner with copies or certificates of the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. Such permits and governmental fees, licenses and inspections include, but are not limited to:

- (1) General building permits;
- (2) Street access permits and all other permits, licenses, inspections, fees and the like required to complete the Project, unless specifically stated otherwise in the Contract Documents;
- (3) Sanitary tap fees, utility meter installation and hook-up charges, and other charges assessed by the City, County, or other sanitary commission;
- (4) Permits for elevator, mechanical, plumbing and electrical work;
- (5) All partial and final Certificates of Approval; and
- (6) Sewer, water and gas tap fees regarding utility connections and extensions.

Design/Builder and Owner shall share the cost of any permits that are for both public and private improvements.

3.2.18 The Design/Builder shall comply with and give notices required by laws, ordinances, rules, regulations, lawful orders and other requirements of public and private authorities applicable to performance of the Work. Design/Builder shall coordinate its Work with public or private authorities, such as utility companies, as required or advisable for performance of the work. The Design/Builder shall cause its General Contractor to procure and obtain all bonds required by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Design/Builder shall cause its General Contractor to prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings.

3.2.19 If any of the Work is required to be inspected or approved by any public or private authority, the Design/Builder shall cause such inspection and approval to be performed. No inspection performed or failed to be performed by the Owner, any public or private authority shall constitute a waiver of any of the Design/Builder's obligations or be construed as an approval or acceptance of any latently defective or deficient Work or any part thereof.

3.2.20 The Design/Builder shall submit a detailed progress schedule for the entire Project ("Construction Schedule") which (i) provides a graphic representation of all activities and events that will occur during performance of the Work; (ii) identifies each phase of construction and occupancy; (iii) sets forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Document ("Milestone Dates"); and (iv) is consistent with the GDA schedule. The Construction Schedule will be attached as Exhibit 1 to this Part 2 Agreement and incorporated herein by this reference. Nothing contained in the Construction Schedule attached shall be deemed to constitute a change or waiver of any requirement by the Design/Builder to achieve Substantial Completion in accordance with Sections 4.3 and 4.4 of this Contract.

3.2.21 The Design/Builder shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Design/Builder's construction schedule and allows the Owner and Design/Builder reasonable time to review submittals.

3.2.22 The Design/Builder shall perform the Work in accordance with the most recent schedules submitted to and approved by the Owner.

3.2.23 The Construction Schedule shall provide for the most expeditious and practicable execution of the Work. The Design/Builder shall also work closely with the Owner to confirm that the Construction Schedule accurately reflects the status of the Project. The Design/Builder's Construction Schedule shall be updated every month by the Design/Builder and submitted to the Owner. Design/Builder is responsible for expediting the Work, identifying potential conflicts and coordination problems that could affect the Contract Time and proposing measures to avoid such problems.

3.2.24 Whenever it becomes apparent from the updated Construction Schedule or Progress Report that any date previously established by the Construction Schedule may not be met, the Design/Builder shall, at the Owner's request, take any or all of the following actions with no increase to the Contract Time or the General Contractor's GMP (unless the delay is caused by an event set forth in Subparagraph 4.5 permitting adjustment to the Contract Time):

- (a) Increase construction manpower to substantially eliminate the back-log of work and return the Project to schedule;
- (b) Increase the number of working hours per shift, shifts per day or the amount of construction equipment or any combination of the foregoing which will substantially eliminate the back-log of work and return the Project to schedule;
- (c) Reschedule activities to concurrently accomplish activities, to the maximum degree practicable, in the time required by the Contract Documents.

If the Design/Builder fails to take any of these actions within seventy-two (72) hours after receiving notice from the Owner, the Owner may (i) take action to attempt to return the Project to schedule and (ii) deduct the cost of such

② ⑨



actions from the monies due or to become due to the Design/Builder, unless the delay is due to a reason articulated in Subparagraph 4.5. If the delay is due to a reason articulated in Subparagraph 4.5, the Design/Builder shall submit to the Owner a recovery plan upon the Owner's request. The Owner may exercise the rights furnished pursuant to this Subparagraph as frequently as the Owner deems necessary to ensure that the Design/Builder's performance of the Work will comply with any Milestone Dates and Substantial Completion Date set forth in the Contract Documents.

**3.2.25** Each month the Design/Builder shall submit to Owner a monthly status report ("Monthly Status Report"). The Monthly Status Report shall summarize the work performed during the preceding month and shall set forth the milestones achieved.

**3.2.26** If the Design/Builder fails for any month to submit accurate and complete schedules or the Monthly Status Reports as required, then Owner may withhold the payment of one-fourth of the Design/Builder's invoice for that month. Upon submission of the outstanding updated schedule(s) or report(s), any amount(s) so withheld shall be released and paid to the Design/Builder.

**3.2.27** The Design/Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Design/Builder shall prepare and use a plan for efficient and effective use of the project site and for secure storage of materials and equipment by the Design/Builder and all Subcontractors.

**3.2.28** If the Design/Builder is required to interrupt utility services to perform its Work, Design/Builder shall coordinate such interruption with the Owner and any affected tenants so as to avoid any damage to the Owner or the tenants. Notwithstanding anything to the contrary contained in the Contract Documents, Design/Builder shall use its best efforts to not interrupt utility service during business hours for any reason, but if it becomes necessary to do so, Design/Builder shall pay any related outage fee and/or premium or overtime charges as a result thereof, the cost of which shall be a Cost of the Work unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and the General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

**3.2.29** Without limitation of any other provision of the Contract Documents, the Design/Builder shall not interfere with the occupancy or beneficial use of any areas and buildings in or adjacent to the Project site.

**3.2.30** The Design/Builder shall assure free, convenient, unencumbered and direct access to properties neighboring the Project site within the alley, street and sidewalk for the owners of such properties and their respective tenants, agents, invitees and guests to the extent reasonably possible. Design/Builder will closely coordinate any planned disruptions of the alley area with affected adjacent property owners or property managers.

**3.2.31** Without prior approval of the Owner, the Design/Builder shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

**3.2.32** The Design/Builder shall not encroach upon adjacent property for storage of materials or any other reason, nor shall any of the Design/Builder's employees be permitted on said properties without written permission of the adjacent property owners and a copy of such permission provided to the Owner. The Design/Builder shall repair at its sole cost and expense any and all damage or injury to adjacent property caused by the Design/Builder's performance of the Work and leave the property in as good condition as before work was started, the cost of which shall be a Cost of the Work unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and the General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers.

**Design/Builder and General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers. Design/Builder shall indemnify, defend and hold harmless the Owner from any liability or responsibility for any claims due to such damage or injury, the cost of which shall be a Cost of the Work unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to**

fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and the General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

3.2.33 Without limitation of any other provision of the Contract Documents, the Design/Builder shall use commercially reasonable efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Work, as such rules and regulations may be amended from time-to-time. The Design/Builder shall immediately notify the Owner in writing if, during the performance of the Work, the Design/Builder finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's reasonable discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements. In the event that Design/Builder's Work or schedule is unreasonably impacted by such requirements, Design/Builder shall be entitled to an equitable adjustment for such impact.

3.2.34 The Design/Builder shall also comply with all insurance requirements and collective bargaining agreements applicable to the use and occupancy of the Project site and the Work.

3.2.35 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Design/Builder. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Design/Builder. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

3.2.36 The Design/Builder and any entity for whom the Design/Builder is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which consent shall not be unreasonably withheld.

3.2.37 The Design/Builder shall notify Owner of any crane swing, underpinning, or similar agreement with adjacent property owners that would facilitate the construction of the Project, but Owner is under no obligation to obtain such agreements. Design/Builder shall comply with the requirements of all such agreements. In the event that Design/Builder's Work or schedule is unreasonably impacted by such requirements, Design/Builder shall be entitled to an equitable adjustment for such impact.

3.2.38 The Design/Builder shall assemble, for the Owner's approval, two (2) complete copies, in looseleaf binders, of all operating and maintenance data from all manufacturers whose equipment is installed in the Project. The Design/Builder shall also prepare, for Owner's approval, a checklist or schedule showing the type of lubricant to be used at each point of application, and the intervals between lubrication for items of equipment.

3.2.39 The Design/Builder shall permit the Owner and anyone designated by Owner to enter upon the Project site, inspect the Work and all materials to be used in the construction thereof, and examine all Drawings and Specifications, shop drawings and other Contract Documents which are or may be kept by the Design/Builder or its Subcontractors at the Project site. The Design/Builder shall cooperate and shall cause all of its Subcontractors to cooperate with the Owner. For each inspection by Owner, the Design/Builder shall make available, on demand, daily log sheets covering the period from the date of the immediately preceding inspection and showing the date, weather, Subcontractors on the job, number of workers and status of the Work. Although the Owner shall have no obligation to do so, it shall have the right to inspect any material or equipment at any stage of development or fabrication, whether specified or noted, including, but not limited to the manufacturer's plant or mill. Such inspection shall not release the Design/Builder from any responsibility or liability with respect to such material or equipment. No inspection, test or payment shall be construed as constituting or implying acceptance of the work or affect the continuing rights of the Owner hereunder after acceptance of the completed Work.

3.2.40 For the duration of the Project, the Design/Builder shall maintain and update monthly, with completed-to-date "As-Built" notations, a designated set of Drawings which shall be available at the Project site for the Owner's and the Design/Builder's inspection at any time. These documents shall be known as the "As-Built Drawings" and shall contain the documents listed hereunder. The information given therein shall include, but not be limited to: (i) the actual location of the underground utilities and appurtenances as referenced to permanent surface improvements;

① 11

(ii) the location of internal utilities and appurtenances concealed in building structures; and (iii) significant changes during the construction process and significant detail not shown in the original Contract Documents. The As-Built Drawings are to be kept accurately. No work shall be permanently concealed until the required information has been recorded.

**3.2.41** Each of the As-Built Drawings shall be clearly marked "Project Record Copy," maintained in good condition, available at all times for inspection by the Owner and not used for construction purposes.

**3.2.42** The Design/Builder shall submit weekly to the Owner copies of its Daily Reports (typed or legibly written), to be received by the Owner the second business day after the week of the report activity. The contents and format of the Daily Reports shall be Design/Builder's standard format as approved by the Owner and shall include, but not be limited to, manpower and equipment counts, weather report, description of Work in progress identified by area, and the failure of a Subcontractor to perform its Work and any other delays. The manpower count should be a list of foreman, journeymen, apprentices and laborers itemized by trade. The Subcontractor shall be required to prepare similar reports which will be available to the Owner upon request.

### § 3.3 ADDITIONAL SERVICES

**§ 3.3.1** The services described in this Section 3.3 are not included in Basic Services unless so identified in Article 14, and they shall be provided by the Design/Builder and paid for by the Owner as provided in this Part 2 Agreement, in addition to the compensation for Basic Services only if authorized or confirmed in writing by the Owner.

**§ 3.3.2** Making revisions in drawings, specifications, and other documents or electronic data when such revisions are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or electronic data.

**§ 3.3.3** Providing consultation concerning replacement of Work damaged by fire ~~the cost of which shall be a Cost of the Work~~ unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and the General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

**§ 3.3.4** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, except where the Design/Builder is a party thereto.

**§ 3.3.5**

**§ 3.3.6** Preparing a set of reproducible record documents or electronic data showing significant changes in the Work made during construction.

**§ 3.3.7**

### ARTICLE 4 TIME

**§ 4.1** Unless otherwise indicated, the Owner and the Design/Builder shall perform their respective obligations as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Project.

**§ 4.2** Time limits stated in the Contract Documents are of the essence. The Work to be performed under this Part 2 Agreement shall commence upon receipt of a notice to proceed, and subject to delays not caused by the Design/Builder, and unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved on or before the date established in Article 14.

**§ 4.3** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use. Substantial Completion for each Garage shall be achieved not later than the following dates:

Block 1/2 Garage

July 24, 2006

**§ 4.4** Design/Builder's Construction Schedule denominated "RS-14" shall be provided consistent with Paragraph 4.2 and 4.3 above.

**§ 4.5** If the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Design/Builder's control, any "Force Majeure" as defined in Paragraph 11.4.2.1.1 of this Part 2 Agreement, or by delay authorized by the Owner pending arbitration, or by other causes which the Owner and Design/Builder agree in writing may justify delay, then the Contract Time shall be reasonably extended by Change Order. Design/Builder and Design Builder's Subcontractors shall not be entitled to any damages for such a delay except as expressly set forth in Paragraph 11.4.2.2 of this Part 2 Agreement.

## **ARTICLE 5 PAYMENTS**

### **§ 5.1 PROGRESS PAYMENTS**

**§ 5.1.1** The Design/Builder shall deliver to the Owner itemized Applications for Payment in such detail as indicated in Article 14.

**§ 5.1.2** Within fifteen ( 15) business days of the Owner's receipt of a properly submitted and correct Application for Payment, the Owner shall make payment to the Design/Builder, provided that the payment applied for is due and owing under the terms of this Part 2 Agreement.

**§ 5.1.3** The Application for Payment shall constitute a representation by the Design/Builder to the Owner that the design and construction have progressed to the point indicated, the quality of the Work covered by the application is in accordance with the Contract Documents, that the Design/Builder's Subcontractors and suppliers have been paid for all Work covered by previous applications, except for applicable retentions, and the Design/Builder is entitled to payment in the amount requested.

**§ 5.1.4** Upon receipt of payment from the Owner, the Design/Builder shall promptly pay the Architect, other design professionals and each contractor the amount to which each is entitled in accordance with the terms of their respective contracts.

**§ 5.1.5** The Owner shall have no obligation under this Part 2 Agreement to pay or to be responsible in any way for payment to the Architect, another design professional or a contractor performing portions of the Work.

**§ 5.1.6** Neither progress payment nor partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

**5.1.6.1** The Owner will not make a progress payment for materials stored on-site or off-site, unless the Owner, in the exercise of its reasonable discretion, authorizes in writing payment for such materials in accordance with this paragraph and only if such materials are stored properly and securely on-site or off-site, protected from the elements and vandalism. If made, payment by the Owner for materials suitably stored on-site or off-site will be limited to the cost of the materials (defined as the amount set forth on the manufacturer's invoice or shipping manifest) and may be made only after the Design/Builder delivers to the Owner the following documentation: (i) bills of sale from the supplier (or other point of purchase) made out to the Owner and other documentation evidencing purchase of such materials prior to the subsequent Application for Payment, the Owner's ownership thereof and the release of any right, title or lien thereto by any vendor (or that such payment and release of vendor rights will be made out of the funds so requisitioned by the Design/Builder), (ii) evidence that such materials are covered to their full replacement values by satisfactory bond and the Design/Builder's "all-risk" insurance or appropriate insurance for the location of storage against loss, theft and damage in a manner acceptable to the Owner, and (iii) certification by the Design/Builder that such stored material has been segregated and marked as owned by Owner and has been inspected, that it meets the Contract Document requirements.

**§ 5.1.7** The Design/Builder warrants that title to all construction covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design/Builder further warrants that upon submittal of an Application for Payment all construction for which payments have been received from the Owner shall be free and

clear of liens, claims, security interests or encumbrances in favor of the Design/Builder or any other person or entity performing construction at the site or furnishing materials or equipment relating to the construction.

**§ 5.1.8** At the time of Substantial Completion, the Owner shall reduce the retainage to 2.5% or pay the Design/Builder the total amount of the retainage, less 200% of the reasonable cost to correct or complete incorrect or incomplete Work, whichever amount leaves a greater amount for the Owner. Reasonable cost as used in the previous sentence shall be measured according to standard costs published by R. S. Means. Final payment of such withheld sum shall be made upon correction or completion of such Work.

**5.1.9** Notwithstanding Paragraph 5.1, Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design/Builder is responsible, including loss resulting from acts and omissions described in Subparagraph 3.1.3, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design/Builder;
- .3 failure of the Design/Builder to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 damage to the Owner or another contractor;
- .5 persistent failure to carry out the Work in accordance with the Contract Documents;
- .6 repeated failure of the Design/Builder to provide updated Monthly Status Reports and progress schedules;
- .7 the filing of a claim or an improper lien or a reasonable basis to believe that a claim or improper lien may be filed, except if the claim is the result of Owner's nonpayment of an amount contained in a previously submitted pay application over which no good-faith dispute exists between Owner and Design/Builder;
- .8 failure to comply with the approved Schedule;
- .9 the existence of any event of default under the Contract Documents.

The Design/Builder shall promptly pay each Subcontractor, within five (5) days after receipt of payment from the Owner, out of the amount paid to the Design/Builder on account to such Subcontractor's portion of the Work, the amount ~~of~~ to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Design/Builder on account of such Subcontractor's portion of the Work. The Design/Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Subsubcontractors in a similar manner. Notwithstanding anything in this Subparagraph 5.1.9 to the contrary, the Owner may make payment requested by the Design/Builder on behalf of a Subcontractor of any tier jointly payable to the Design/Builder and such Subcontractor. The Design/Builder and such Subcontractor shall be responsible for the allocation and disbursement of funds including as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor of any tier, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

**5.1.10** If the Owner is entitled to reimbursement or payment from the Design/Builder under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Design/Builder fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Design/Builder or to correct defective work, the Owner shall have the right to offset such amount against any amounts due and owing to Design/Builder and may, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design/Builder from the Owner, or (ii) invoice the Design/Builder for that cost for payment by the Design/Builder in accordance with the same terms of payment, including interest, that the Owner is obligated to the Design/Builder under the terms of this Part 2 Agreement.

5.1.11 All progress payments to Design/Builder shall be subject to retention of ten (10%) percent until Substantial Completion, then reduced as per Paragraph 5.1.8, except that in the event Design/Builder or any of its Subcontractors is a non-resident contractor, Owner shall be entitled to continue to withhold three (3%) percent of the non-residential Contractor's retainage, pursuant to Section MD Tax General Code Ann Section 13-803. Design/Builder shall include a provision similar to this subparagraph 5.1.11 in the General Contractor's contract and shall cause the General Contractor to comply with the statutory provisions cited herein. Retention shall not be withheld on General Contractor's General Conditions or Fee.

Retention shall be applied separately to each garage, and Substantial Completion shall be achieved separately for each garage. No retainage shall be held on the Design/Builder's Fee.

## **§ 5.2 FINAL PAYMENTS**

§ 5.2.1 Neither final payment nor amounts retained, if any, shall become due until the Design/Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design/Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) all governmental or other approvals and permits required for the beneficial use and occupancy of the Work, including a Certificate of Occupancy or Non-Residential Use Permit, if required, (7) two (2) sets of As-Built Drawings; (8) a final Design/Builder's sworn statement and final lien waiver from the Design/Builder, duly executed and acknowledged and evidencing that all Subcontractors have been fully paid and similar sworn statements and lien waivers from all Subcontractors, Sub-subcontractors and material suppliers, (9) all guarantees and warranties required by the Contract Documents, endorsed as necessary by the Design/Builder to the Owner, (10) certificates from the Design/Builder that the Project has been completed in accordance with the Contract Documents, (11) the Design/Builder's satisfactory cleaning of the site of the work as required under the Contract Documents, (12) the notebooks identified in Subparagraph 3.2.38 herein, (13) two (2) sets of change orders, (14) reports including, but not limited to, equipment testing and balancing reports, (15) certifications and test results as called for in the Contract Documents, (16) keys appropriately marked for all locks, along with key and master key inventory records, (17) maintenance stock as required by the Specifications, (18) minutes from all meetings, and (19) monthly progress photographs. If any Subcontractor refuses to provide a release and waiver required by the Owner, the Design/Builder shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If, after final payment, any claim or lien is filed by any Subcontractor against the Owner, Design/Builder agrees to immediately upon request of the Owner furnish a bond and to defend and /or indemnify Owner against any such claim or lien. If Design/Builder fails to defend and indemnify Owner against such claim or lien and Owner is compelled to pay in defending and/or discharging such claim or lien, Owner shall be entitled to seek reimbursement from Design/Builder of all costs incurred as a result, including all costs and reasonable attorneys' fees, and expert fees incurred by the Owner in connection therewith.

§ 5.2.2 When the Work has been completed and the contract fully performed, the Design/Builder shall submit a final application for payment to the Owner. The Owner and its accountants will review and report in writing on the Design/Builder's final accounting within 30 days of the delivery of the final Application for Payment. Based upon such Cost of the Work as the Owner and its accountants' report to be substantiated by the Design/Builder's final accounting, the Owner will within seven (7) days after completion of its review of the Design/Builder's final accounting either make final payment to the Design/Builder, if all conditions of payment under this Part 2 Agreement have been met, or notify the Design/Builder in writing of the reasons for withholding any of the payment applied for by the Design/Builder.

5.2.3 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- 1 liens, claims, security interests or encumbrances arising out of the contract and unsettled;

- .2 failure of the work to comply with the requirements of the Contract Documents;
- .3 terms of all warranties at law and all contractual warranties required by the Contract Documents;
- .4 latent defects; and/or
- .5 continuing obligations, liabilities or responsibilities of Design/Builder under the Contract Documents that would otherwise survive completion and acceptance of the Work and final payment by Owner including, without limitation, Design/Builder's indemnification obligations under the Contract Documents.

**§ 5.2.4** Acceptance of final payment shall constitute a waiver of all claims by the Design/Builder except those previously made in writing and identified by the Design/Builder as unsettled at the time of final Application for Payment.

**§ 5.2.5 Claims for Consequential Damages.** The Design/Builder and Owner waive claims against each other for consequential damages arising out of or relating to this Agreement. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design/Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 12. Nothing contained in this Section 5.2.5 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of this Agreement.

## **§ 5.3 INTEREST PAYMENTS**

**§ 5.3.1** Payments due the Design/Builder under this Part 2 Agreement which are not paid when due shall bear interest from the date due at the rate specified in Article 13.

## **ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY**

**§ 6.1** The Design/Builder shall be responsible for initiating, maintaining and providing supervision of all safety precautions and programs in connection with the performance of this Part 2 Agreement.

**§ 6.2** The Design/Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Design/Builder or the Design/Builder's Subcontractors - it being understood that any of the Design-Builder's or Design/Builder's Subcontractors' materials and equipment stored in work areas on the site shall conclusively be deemed to be in the custody of the Design-Builder, and the Design/Builder shall be responsible for the security of such materials and equipment; and (3) other property at or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal relocation or replacement in the course of construction.

**§ 6.3** The Design/Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury or loss. The Design/Builder shall pay any fines levied against the Owner or the Design/Builder because of the Design/Builder's failure to comply with any safety regulations or laws, the cost of which shall be a Cost of the Work unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make reasonable efforts to

recover from any insurance, sureties, subcontractors or suppliers. If the Design/Builder fails to pay any such fines, the Owner may, upon written notice to the Design/Builder, pay them and seek reimbursement from Design/Builder for them or deduct such amount from moneys due or to become due to the Design/Builder. It shall constitute negligence on the part of the Design/Builder or its Contractor for purposes of this section 6.3 if any such fine is imposed as a result of the Design/Builder or its Contractor knowingly failing to obtain required inspection approvals or otherwise knowingly performing Work that has not been authorized.

6.3.1 The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and uses of adjacent sites and utilities. The Design/Builder shall be responsible, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired, the cost of which shall be a Cost of the Work unless 1) it is caused by the Design/Builder or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers.

6.3.2 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the work, the Design/Builder shall exercise proper and due care and carry on such activities under supervision of properly qualified personnel and shall give Owner five (5) business days advance notice. Design/Builder is fully responsible for any and all damages, claims, and for the defense of all actions against Owner, Owner's representatives, and Design/Builder, and their consultants and employees resulting from the prosecution of such Work, the cost of which shall be a Cost of the Work unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers.

6.3.3 Use or storage of explosives is prohibited without prior written consent from the Owner, which must be received by the Design/Builder not less than five (5) business days in advance of use or storage of explosives. If the Owner grants consent, Design/Builder shall store all explosives in secure manner and mark all storage places clearly "DANGEROUS EXPLOSIVES."

§ 6.4 The Design/Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance provided or required by the Contract Documents) to property at the site, the cost of which shall be a Cost of the Work unless 1) it is caused by the Design/Builder's or General Contractor's own negligence or failure to fulfill a specific responsibility of the Design/Builder or General Contractor, or 2) it is caused by the negligence of one of the General Contractor's Subcontractors or suppliers and General Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Design/Builder and General Contractor shall make all reasonable efforts to recover from any insurance, sureties, subcontractors or suppliers. If insured damage or loss is not promptly paid by applicable insurance (taking into consideration the nature of the damage or loss), Design/Builder shall remedy such damage or loss and look to the applicable insurance for reimbursement.

6.4.1 The Design/Builder shall designate a responsible member of the Design/Builder's organization at the site whose duty shall be the prevention of accidents and damage to property, and to supervise and train personnel in the use of dangerous and hazardous equipment, materials and substances necessary for the Work. This person shall be the Design/Builder's superintendent unless otherwise designated by the Design/Builder in writing to the Owner.

6.4.2 The Design/Builder shall not load or permit any part of the construction or site to be loaded with weights that will exceed design loads so as to endanger its safety, the safety of adjacent existing buildings, or the safety and health of persons or property.

6.4.3 Where required for the safety of the Work, the Design/Builder shall shore up, brace, underpin and protect foundations and other portions of existing structures which are in any way affected by the Work.



6.4.4 Design/Builder shall give notice in writing at least 48 hours before breaking ground, to public utility companies and to governmental agencies that may be affected by Design/Builder's operation, in order that they may remove any obstruction for which they are responsible and have representatives on the Project site to see that their property is properly protected.

6.4.5 When all or a portion of the Work is suspended for any reason, the Design/Builder shall securely fasten down all coverings and protect the Work, as necessary, from injury by any reasonably foreseeable cause.

6.4.6 Temporary items (such as, but not limited to, scaffolding, staging, lifting and hoisting devices, shoring, excavation, barricades, and safety and construction procedures) necessary in completion of Project shall be provided by the Design/Builder and its Subcontractors and shall comply with all applicable codes and regulations. It shall not be responsibility of Owner or its representatives to determine if Design/Builder and its Subcontractors or their representatives are in compliance with the aforementioned regulations.

6.4.7 The Design/Builder shall comply with all Federal Occupational Safety and Health Administration Hazard Communications Act (HAZCOM) requirements, including properly maintaining Materials Safety Data Sheets (MSDS) at the Project site. The Design/Builder shall ensure that all MSDS are compiled in a single location at the Project site, and are available to the regulating agencies.

6.4.8 The Design/Builder shall be responsible, at its sole cost and expense, for any fines, penalties or charges by any regulatory body by reason of any violation of safety or health regulations by Design/Builder or its Subcontractors. Design/Builder shall also be responsible for reimbursement of any OSHA or MOSH fines incurred by the Owner for Project site safety conditions created or controlled by the Design/Builder, that result in the Owner receiving a citation under the OSHA or MOSH multi-employer citation provision.

6.4.9 The Design/Builder shall notify Owner's and its personnel upon arrival to the Project site of any known safety or health hazards at the Project, and the precautions they should take.

6.5. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a concealed and undisclosed hazardous material or substance, including but not limited to asbestos, polychlorinated biphenyl (PCB), radon gas, industrial waste, acids, lead, alkaline, or other pollutants, excluding mild chemicals used in the cleaning of finished building materials, encountered on the site by the Design/Builder, the Design/Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

6.5.1 If at anytime Design/Builder shall become aware, or have reasonable cause to believe, that there has occurred or will occur any release of asbestos or any other hazardous substance for which a warning or disclosure is or will be required under any applicable law or regulation, or for which any reporting or notification to any local, state or federal governmental agency is or will be required under any applicable law or regulation, the Design/Builder shall immediately upon discovering such condition or suspected condition give notice thereof to the Owner.

6.5.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design/Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Design/Builder the names and qualifications of person or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design/Builder will promptly reply to the Owner in writing stating whether or not the Design/Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design/Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design/Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design/Builder. The Contract Time shall be extended appropriately. The term "rendered harmless" shall be interpreted to mean that levels of asbestos, polychlorinated biphenyls or other hazardous materials are less than any applicable exposure standards set forth in OSHA or MOSH or other applicable regulations. The Design/Builder agrees not to use any fill or other materials to be incorporated into the Work that are known in the industry to be hazardous or toxic.

6.5.2.1 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design/Builder, Subcontractors, Architect, Architect's consultants and subcontractors, agents, and employees of any of them for any claims, damages, losses and expenses, including attorneys' fees arising out of or resulting from performance of Work in an area affected by the presence of any hazardous substance, if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that such claims, damages, loss or expense is attributable to bodily injury, sickness or death or to injury or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of the party seeking indemnity.

6.5.3 The Owner shall not be responsible under this Part 2 Agreement for hazardous materials and substances brought to the site by the Design/Builder unless such materials or substances were required by the Contract Documents and the Design/Builder has so notified the Owner.

6.5.4 Design/Builder shall avoid the use of substances known in the industry to be hazardous, and avoid any releases of such hazardous substances into the environment, in performing services under the Contract Documents. If the use of some hazardous substance is required in connection with a service or work to be performed under the Contract Documents, Design/Builder shall use commercially reasonable efforts to procure and use the least hazardous substance or material suitable for such work or service. Design/Builder shall certify to Owner, and provide Owner with manufacturers' or suppliers' data (if available) indicating, that no asbestos-containing materials have been used in performing the Work.

6.5.5 Design/Builder shall not, without Owner's prior written consent, use any substances known in the industry to be hazardous, or any construction materials containing such hazardous substances, at the Project site if the presence of such substances or materials, or the manner in which they are used, will cause or risk causing any exposure for which a warning or disclosure, to any occupant of the building other than Design/Builder's own employees and permitted subcontractors, would be required under any applicable law or regulation, at any time during the performance of the Work.

6.6 In an emergency affecting safety of persons or property, the Design/Builder shall act, at the Design/Builder's discretion, to prevent threatened damage, injury or loss.

6.6.1 The Design/Builder shall promptly report in writing to Owner all accidents arising out of or in connection with the performance of the Work, whether on or off the Project site, which caused death, personal injury, or property damage, giving full detail and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner.

## **ARTICLE 7 INSURANCE AND BONDS**

### **§ 7.1 DESIGN/BUILDER'S LIABILITY INSURANCE**

**§ 7.1.1** The Design/Builder shall purchase from and maintain, in a company or companies acceptable to Owner, lawfully authorized to do business in the jurisdiction in which the Project is located, such insurance as will protect the Design/Builder from claims set forth below which may arise out of or result from operations under this Part 2 Agreement by the Design/Builder or by a contractor of the Design/Builder, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit laws that are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design/Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the Design/Builder's employees;
- .4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Design/Builder or (2) by another person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

22 19

- .7 claims involving contractual liability insurance applicable to the Design/Builder's obligations under Section 11.5 to the extent such provision relates to personal injury or property damage.
- .8 claims for bodily injury or property damage arising out of completed operations.

§ 7.1.2 The insurance required by Subparagraph 7.1.1 shall be written for not less than limits of liability specified in Paragraph 7.5 below written on an occurrence basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Products and completed operations coverage shall be maintained for a period not less than five (5) years after the date of Substantial Completion of the Project. It is understood that this coverage shall be provided pursuant to the General Contractor's annual renewal of its commercial general liability policies.

§ 7.1.3 Certificates of Insurance acceptable to the Owner or certified copies of policies if requested by Owner shall be delivered to the Owner immediately after execution of this Part 2 Agreement. These Certificates and the insurance policies required by this Section 7.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the application for final payment. Information concerning reduction of coverage shall be furnished by the Design/Builder with reasonable promptness in accordance with the Design/Builder's information and belief. Certificates required herein shall be furnished in duplicate, or copies of policies if requested by the Owner, and shall specifically set forth evidence of all coverage required by Subparagraphs 7.1.1 and 7.1.2, and the Design/Builder shall furnish to the Owner copies of endorsements that are subsequently issued amending coverage or limits.

7.1.4 The Owner will be named as an "additional insured" on the Design/Builder's commercial general liability insurance and excess liability insurance. Design/Builder shall provide Owner with an endorsement or rider to the policy reflecting same.

7.1.5 Compliance by the Design/Builder with the insurance requirements contained in Article 7 shall not relieve him of liability under any indemnity or other provision set forth in the Contract Documents or limit his liability under the Contract Documents or applicable law.

## **§ 7.2 OWNER'S LIABILITY INSURANCE**

§ 7.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self-protection against claims which may arise from operations under this Part 2 Agreement. The Design/Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

## **§ 7.3 PROPERTY INSURANCE**

§ 7.3.1 Unless otherwise provided in this Part 2 Agreement, the Design/Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of \$39,677,000 (or the amount of the revised GMP for all of the Public Garages), plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Said builder's risk amount is for the public garages. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final completion. This insurance shall include interests of the Owner, the Design/Builder, its Subcontractors and Sub-subcontractors in the Project. This insurance shall provide that in the event of payment for any loss or damage, the insurer shall have no right of recovery against any parties named as insured or additional insureds.

§ 7.3.2 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, falsework, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the services and expenses of the Design/Builder's Architect and other professionals required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.